TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

~~No. 470.~~ ~~225~~ 31

HARVEY TERRY, APPELLANT,

vs.

THE MERCHANTS AND PLANTERS' BANK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED AUGUST 15, 1874.

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1 *Copy original bill.*

In equity.

UNITED STATES OF AMERICA,
Southern District of Georgia:

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia, sitting as a court of equity.

Harvey Terry, a citizen of the State of Pennsylvania, in the said United States of America, brings this bill of complaint in behalf of himself and all other parties in like condition who will concur and unite and contribute to the expenses of this proceeding against the Merchants and Planters' Bank, a body corporate and politic, located in Savannah, Georgia, and Hiram Roberts, who are citizens of, and reside in, the State of Georgia, in the said United States of America, and in the said southern district of Georgia.

And thereupon your orator, Harvey Terry, as well for himself as for those who may hereafter unite in this proceeding, complains and says: That the Merchants and Planters' Bank, a body corporate and politic, regularly incorporated by the laws of the said State of Georgia, located and heretofore doing business in the city of Savannah, in the said southern district of Georgia, as a bank, and engaged in the ordinary business of banking, to wit, in issuing and circulating its notes or bills, commonly called "bank-bills," selling exchange, receiving deposits, &c.

2 That your orator heretofore, for a valuable consideration, and in the regular course of business, obtained and acquired possession of by delivery of the said notes or bills so issued and put in circulation by said bank, (the same being payable to bearer,) to the amount of twenty-five thousand dollars, of various dates, numbers, and denominations, and which said bank-bills are with this bill filed in the office of the clerk of this court; that the said bank-bills are the property of your orator, and he alone entitled to receive payment thereof.

That before and after the eighteenth day of July, 1866, the said Merchants and Planters' Bank failed to execute or perform any of its functions as a bank, and became, and was, in fact, insolvent, and that since the day last aforesaid the said bank, being so insolvent, has failed and refused, and still refuses, to redeem its outstanding bills so issued and circulated, and to pay its depositors as other creditors.

That afterwards, on the eighteenth day of July, in the year eighteen hundred and sixty-six, the said bank executed a deed of assignment to Hiram Roberts, purporting to convey to him all the property, effects, or assets of said bank, in trust for the benefit of its creditors, a copy of which is hereto annexed, marked Exhibit A, and which your orator prays may be made a part of this his bill, with leave of reference thereto as often as may be necessary.

That said Hiram Roberts, on the day of the execution of said deed, accepted the same and the trusts thereby created, and took upon
3 himself the execution of the same. And your orator alleges that the said Hiram Roberts, at the time of the execution of the said deed of assignment and the acceptance thereof, and for a long time before, had been, and then was, the president of said bank, and had, as such, the custody of all the property, effects, and assets of every de-

scription of said bank, and immediately on accepting said trust took possession, control, and exclusive management of said property as such assignee, and upon the trust declared in said deed.

And your orator had well hoped that the said assignee would, as was his duty, have distributed amongst the creditors of said bank the large amount of money so assigned him at once and without any delay, and as early as practicable have converted the property assigned into money, and made like distribution of that also.

But, on the contrary, your orator expressly charges that he has refused to distribute the said large sum of money, or any portion thereof, to or amongst the creditors of said bank or any portion of them, and has neglected and refused to sell and convert into money the property and assets so assigned him, but has appropriated, and is still appropriating, the same to the use of the said bank and to his own use, and to the use of other persons, and to purposes foreign to said trust, and in disre-
4 gard of the rights of your orator and the other creditors of said bank and his duty and obligation as such assignee and trustee.

Your orator expressly charges that the said Hiram Roberts has been, and is now, using means to depreciate the par value of the notes of said bank, in order that the stockholders, he being one, and owning and controlling four thousand shares of the capital stock of said bank, and other interested parties, may buy them in at reduced prices, and thus speculate on and receive advantage and profit from your orator and others holding said notes.

And your orator further shows unto your honors that all the property, effects, and assets owned and claimed by said bank at the time of the execution of the said deed, and within a short period anterior thereto, are not embraced in the schedule attached to said deed of assignment, and which came into the possession of said assignee, or ought to have, and with proper care and management might have, been reduced to possession by the said assignee.

That in consequence of said assignee having exclusive custody of such property, effects, and assets, as officer of said bank, as before stated, and refusing, when taking possession of the same, and since that time, as such assignee, to account with or give information to the creditors of said bank, *as* allowed examinations made by them as to
5 said property, effects, and assets which have come into the possession of said assignee, your orator is unable to give a more particular account or description of the same, but charges that it is in the power of the said assignee to do so; and your orator asks that the said Hiram Roberts may be required fully to discover the same.

Your orator is informed and advised that, by a special provision in the charter of the said Merchants and Planters' Bank, "That the persons and property of the stockholders (in said bank) shall at all times be liable, pledged, and bound for the redemption of bills and notes at any time issued, in proportion to the number of shares that each individual and corporation may hold and possess, and that such liability shall not be discharged by a sale and transfer of said stock, unless at the time of such sale the sale was made for a good and valuable consideration, and was a bona-fide transaction, and the bank was in a sound and solvent condition at the time of such sale, in which event such liability shall not continue beyond six months after such sale and transfer."

Your orator charges this liability, and claims the full benefit thereof and his full remedy, should it become necessary to secure and enforce his just, legal, and equitable rights and demands against the stockholders of the said bank.

6 Your orator is informed and believes, and so charges, that

there is ample property, effects, and assets of the said bank that are available under proper disclosures and an honest administration of the same to redeem all the notes or bills issued by said bank.

To the end, therefore, that the said actings and doings of the said Merchants and Planters' Bank, and the said Hiram Roberts, trustee, as aforesaid, may fully be disclosed and reviewed, that the rightful demands of your orator and such other creditors of the said bank as may join in this bill of complaint and share the cost and expenses thereof, may be properly investigated, ascertained, and adjusted, that the whole assets of the said bank may be collected under and by virtue of the judicial power of this court, and received and paid into this court, and be regularly and lawfully and equitably distributed to the respective creditors entitled thereto, under the direction of this court, and that your orator may have such other and further relief as the equity of the case may require, and that the said defendants may be compelled to answer in all respects this bill as fully and particularly as if thereunto specially interrogated, and that not only as to their knowledge and remembrance, but also as to their information and belief.

7 And that they may more especially answer and set forth:

1st. Whether the said deed of assignment was not executed and accepted as charged in said bill, and whether the copy annexed is not a true copy of the same.

2d. Whether the said Hiram Roberts did not immediately upon the execution of said deed, or very soon thereafter, take possession of all the property, effects, and assets owned, possessed, and claimed by said bank at the time of the execution of said deed, and state particularly and specifically in what the said property, effects, and assets consisted, describing each article of property or chose in action, how much money in gold and how much in currency, and the kind of currency.

3rd. Whether said money, property, effects, or assets so assigned and possessed by the said Hiram Roberts, assignee as aforesaid, has been disposed of, or any portion of the same; and if so that he may set forth fully what portion has been so disposed of, when and to whom, and for what consideration, and on what account the same was so disposed of, giving a full statement of each transaction separately and distinctly.

4th. Whether the said defendant, Hiram Roberts, has delivered over or paid to any creditor of said bank any portion of the money, property, effects, or assets assigned to him or collected by him; if so, to whom, to what amount, on what terms and conditions, and when, and what

8 he received for what was so turned over or paid out.

5th. What amount of debts or claims against said bank have been paid and settled; what the character of the claims. State whether or notes of the bank, deposits, or other character. Set forth fully and particularly, and to whom and when paid.

6. What was the indebtedness of said bank at the time of making said assignment to depositors, or in any other manner than by its bills or notes, to whom indebted? Give a statement of such indebtedness, and the names of the parties to whom the said bank is thus indebted, and the amount to each.

7. What amount of the bills or notes of said bank were in circulation or outstanding at the time of making said assignment, and what amount are outstanding at the date of your answer hereto? What amount do you know, of your own knowledge, or been notified of, as being in the hands of other persons and who claim them as a debt against the bank?

8. What amount of the assets of the said bank are uncollected, why they are uncollected, and where are they? What amount of the notes of said bank are unredeemed, and why they remain so unredeemed.

10. What amount of money is due from the stockholders in said bank on account of stock subscribed and not paid in? From whom is the same due, and what amount from each? Give the name of each of the stockholders in said bank who have not paid the full amount by them subscribed and the amount due from each. And if any such stockholder has paid any part of such stock since said assignment, state who, the amount paid, and when paid. Also, state why the said unpaid subscriptions to the capital stock have not been collected; what effort is made to collect the same, if any.

11. That the said defendants may answer this bill fully, and in all respects and to every legal intent and purpose, and make a full and perfect disclosure of all transactions in relation to his dealings with and control over the property, effects, and assets of said bank.

And that the said Hiram Roberts, as such trustee, may be held to account fully and satisfactorily for all the property, effects, and assets that went into his hands as such trustee or assignee. And also for the interest, rents, issues, and profits accruing thereon; and that he be required by the decree of this court to distribute, with as little delay as possible, the same among the creditors of said bank, according to their respective claims and just and equitable rights thereto.

And, in order to secure to your orator and enable him to enforce, if necessary, his just, legal, and equitable demands against the stockholders of said bank, he further prays that this honorable court will decree in his favor against the said Merchants and Planters' Bank for the amount of his claim against the said bank, less the amount recovered against the said assignee.

Lastly, your orator prays in this behalf that your honors will, whenever the safety of said trust-fund or the proper execution of said trust should make it necessary, interpose in his behalf, and award a writ of injunction prohibiting and restraining the said Hiram Roberts, assignee as aforesaid, his agents, attorneys, or representatives, or any of them, from receiving, demanding, controlling, or in any way dealing with or disposing of the property, effects, and assets of said bank, or in any way transacting any of the business thereof until the further order of this court.

And in this behalf, and as the only safe and reliable protection to the property, effects, and assets of said bank, your orator further prays that a receiver may be regularly appointed to take charge of all the property, effects, and assets of said bank, to collect the same under the authority and direction of this honorable court, and to hold the same subject to its further decretal orders, rulings, and judgments as to this court may seem meet and proper, and cause the due execution of said trust.

And that your honors would grant unto your orator such other and further relief as to your honors shall seem reasonable and proper in the premises,

May it please your honors to grant unto your orator the writ of subpœna to be directed to the said The Merchants and Planters' Bank and to the said Hiram Roberts, requiring them, and each of them, to be and appear, personally or by attorney, at the clerk's office of said court, in the city of Savannah, at rules, to be had on the first Monday in September next, then and there to answer the premises and to stand to and abide such order or decree as may be made in the premises.

HARVEY TERRY.

A. W. STONE,
Sol'r for Complainant.

11 *Oath to bill of complaint.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

In the clerk's office of the United States court, Savannah, June 18, 1869.

This day personally appeared Harvey Terry, and subscribed the foregoing bill, and made oath that the facts set forth in the foregoing bill are true, to the best of his knowledge and belief.

JA'S MCPHERSON, *Clerk.*

Deed of assignment.

STATE OF GEORGIA,
Chatham County:

An indenture made and entered into this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the Merchants and Planters' Bank, a body-corporate, and duly incorporated under the statutes of Georgia, of the first part, and Hiram Roberts, of the city of Savannah, county and State aforesaid, of the second part.

Whereas the said party hereto of the first part, by reason of losses arising from circumstances incident upon the late war, is unable to pay its just and legal debts; and whereas, at a meeting of stockholders of the said corporation, held in the said city of Savannah, on the eighteenth day of July instant, it was, among other things, resolved "that
12 the property and assets of said corporation be assigned to some fit and proper person, to be selected by the said board of directors, for the benefit of the creditors of the said corporation;" and whereas, on the eighteenth day of July, instant, and subsequently to the passage of the aforesaid resolution by the stockholders of corporation at a meeting of the board of directors of the said corporation, it other things, resolved "that the president be, and he is here to make the surrender of the charter of this corporation a law, and to execute and make an assignment of all the prope credits, and assets of this corporation to Hiram Roberts, for benefit of the creditors of this corporation, and to fix to sai and assignment the common seal of said corporation:"

Now, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises and of one dollar to it in hand paid by said Hiram Roberts, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, confirmed, assigned, and transferred, and by these presents does grant, bargain, sell, alien, remise, release, confirm, assign, and transfer, unto the said Hiram Roberts and his heirs and assigns, all the lands, tenements, and hereditaments, goods, chattels, merchandise, debts, choses in action, sum and sums of money due, owing, or belonging to said party of the first part, and all securities had, taken, and obtained for the same, and all the estate, right, title, interest, property, and claim of said party of the first in and to the same, according to a schedule
13 thereof hereto annexed, marked A, to have and to hold the same, with the appurtenances, unto the said Hiram Roberts and his heirs, executors, administrators, or assigns, upon the conditions and trusts, nevertheless, that the said Hiram Roberts shall forthwith take possession and seizin of the premises, and, within such convenient time

as to him shall seem meet, by public or private sale, as he may deem best, for the best price that can be procured, shall convert all and singular the premises into money, and as soon as possible collect all and singular the debts and sum and sums aforesaid, and, after deducting the costs and charges of these trusts, shall pay and apply the monies arising therefrom in manner following, that is to say, in trust to pay all the moneys so to be received by him to the creditors of the said party of the first part, rateably and in equal proportions, according to their several and respective legal priorities.

And the said party of the first part, in furtherance of the premises, doth hereby make, constitute, and appoint the said Hiram Roberts its true and lawful attorney, irrevocable, in his name or otherwise, and for the trust aforesaid, to ask, demand, recover, and receive of and from all and every person and persons all and singular the property and estate, goods, chattels, wares, merchandize, debts, choses in action, sum and sums of money, and demands due and owing or belonging to said party of the first part, and upon all receipts and deliveries in the premises, due acquittances and discharges, in his name or otherwise, to make, execute, and acknowledge, and, in default of de-
14 delivery or payment in the premises, to sue, prosecute, and implea for the same as he may see fit, and to compound and agree for all or any part thereof, and upon such composition or other agreement to make due acquittances and releases, and also, for all or any of the purposes aforesaid, to constitute one or more attorneys under him; and the said Hiram Roberts hereby covenants, for himself and his heirs, executors, and administrators, that he will keep a just and true account of all moneys received by him by reason of the premises, together with the time when, and the persons from whom, the same shall be received, and that he will well and truly pay and distribute the same, according to the trusts before mentioned; and further, that he will faithfully and justly conduct himself, according to his best skill, power, and ability, in the execution of the trusts reposed in him in all respects whatsoever; and that he will, from time to time, and whenever called upon by said party of the first part, or its authorized agent, render and give a full, fair, and complete statement of all his actings and doings in the premises.

In witness whereof the president of the said The Merchants and Planters' Bank has hereunto set his hand and affixed the common seal of said corporation, and the said Hiram Roberts has hereunto set his hand and seal, the day and year first hereinbefore written.

{ SEAL OF THE CORPORATION. }

HIRAM ROBERTS,
President Merchants & Planters' Bank.
HIRAM ROBERTS.

Signed, sealed, and delivered in presence of—
WM LAW.
ROBERT FALLIGANT,
Notary Public, Chatham County, Georgia. [NOTARY'S SEAL.

[U. S. intern'l-revenue stamp, $100.]

15 SCHEDULE A.

1864.	Nov'b'r	30.	1 day.	Charlotte A. Branch		310.991
1864.	Aug.	19.	69 "	G. A. Bandy, mortgage	2000.	
1863.	Sept.	1.	30 "	Endorsed Nov'r 3rd	1000	
						100.000.
1863.	Sept.	1.	30 "	A. Bonand, security, confederate bonds		201.265
1863.	June	13.	4 months.	A. Bonand, "		200.000

1864.	April	12.	1 day.	W. W. Billups			30. 000.
"	July	12.	1 "	John S. Bryan			30. 000.
"	Nov.	23.	60 "	E. Baynard, F. H. Verdier, & P. H. Behu			200. 000
"	Oct.	14.	60 "	W. H. Burroughs, security, Merchants and Planters' Bank scrip			200. 000
"	"	19.	90 "	W. H. Bulloch, pledge Merchants & Planters' B'k scrip			30. 000.
"	Sept.	1st.	Jan'y next.	F. W. Bailey, security confederate 7-30 tr'y notes			71. 436.
"	Nov.	15.	30 days.	Belle & Christian, Isaac De La Roche			200. 000.
"	Nov.	10.	30 days.	C. W. Brunner, Dwight Lathrop			500. 000.
"	Aug.	24.	30 days.	M. Cleary, certificate deposit Confederate States			30. 190.
1863.	May	9.	6 months.	W. M. Chartes, scrip Merchants & Planters' B'k			19. 00
1859.	"	27.	27th May, 1864.	G. C. Carmichael, M. C. Carmichael, & mortgage			156685.
1864.	Nov'b'r	3d.	1 day.	N. P. Crowell Confederate States bonds			100. 000.
"	"	2d.	90 "	Margaret Charlton, Julian Hartridge			52. 000.
"	Sept.	24th.	90 "	R. Cogdell, W'm M. Davidson			200. 000.
"	Nov.	18.	30 "	W. B. Adams, F. I. Champion			503. 165.
"	Oct.	6.	60 "	I. H. Zeilin & Co., F. I. Champion			1000. 000.
"	Jan'y	21.	60 "	A. Dutenhofer, M. I. Jewett	15. 000. 00		
"	Aug.	24.	Paid on ac		7000.		
"	Oct.	6.	" " "		5000.		
						12. 000. 00	3000. 00
1864.	Sept.	2d.	1 day.	M. A. Dillon			500. 00.
"	Nov.	30.	1 day.	M. A. Dillon			500. 00.
"	"	2d.	60 days.	W. B. Fleming, James Gardner			202. 417
"	Feb'y	8th.	4 mo's.	Louis A. Falligant, confederate bonds			256. 040.
	1863.	May	28. 60 days.	Martin J. Ford			30. 000.
16	1863.	Sept.	2. 60 days.	Martin J. Ford			20. 000.
	1864.	April	23. 30 "	L. I. B. Fairchild, certificate deposit Merchants & P. B'k			1600. 000.
1863.	Decemb.	1.	12 mo's.	W. W. Headley, bond city of Savannah			500. 00
1864.	Oct.	22.	60 days.	M. Hackett, I. M. Henderson			300. 00.
"	"	28.	90 "	Julian Hartridge, A. S. Hartridge			2. 060. 00.
1864.	Oct.	26.	60 "	W'm W. Heidt, E. L. Neidlinger			5. 000. 00
"	"	31.	90 "	Julian Hartridge, A. S. Hartridge			4. 073. 00
"	Sept.	29.	3 mo's.	Elliott C. Johnson, 2 collateral notes for security			400. 00
"	Sept.	28.	60 days.	W. B. Jackson, J. M. B. Lovell			500. 00
"	Oct.	8.	60 "	Geo. I. Kollock, Geo. James			500. 00
"	Nov.	29.	20 "	C. P. Lopez, I. O. Bartells, W. H. Wiltberger & Co			5. 000. 00
"	Oct.	20.	60 days.	L. M. Lamar, W. H. Wiltberger & Co			134. 750.
"	Oct.	25.	60 "	D. & E. S. Lathrop, I. S. Rogers			5. 000. 00
"	"	26.	60 "	Isaac De La Roche, I. F. Wheaton			5. 000. 00
"	Nov.	1.	60 "	Dwight Lathrop, C. W. Brunner			10. 000. 00.
"	June	30.	6 months.	Luffburrow & Timmons, M. Luffborrow & mortgage			25. 000. 00
"	Sept.	29.	1st day, Jan'y next.	Henry M. Law, W'm Law			254. 64
"	Nov.	3.	60 days.	D. & E. S. Lathrop, John S. Rogers			500000
"	Nov.	2.	60 "	Dwight Lathrop, C. W. Brunner			10000000
				Am't brought forward			18107770.
1864.	Nov.	19.	60 days.	S. S. Law, W'm Law			10000
"	Oct.	18.	60 "	Isaac D. La Roche, I. Lam	80966, 57.		
"	Oct.	14.	60 "	Isaac D. La Roche, I. Lama'	4939390		
						13036047.	
Jan. 9th, 1865.				Cr. on these notes	10206665		
					25000. 00		
						12706665	
							329382.
1864.	Sept.	7.	On demand.	C. A. L. Lamar, G. B. Lamar			10000000
"	Oct.	28.	1 day.	W'm Law, Confederate States bond			151813
	1864.	Oct.	15. 1 day.	W'm Law, confederate bonds			300000
17	"	Oct.	14. 1 day.	I. M. McIntosh, F. L. Gue, S. M. Bond			30000
	"	Nov.	23. 60 days.	John McReady, I. C. Footman			10121

1864.	Oct.	31.	30 days.	I. M. Muller, mortgage			600000
"	Oct.	28.	30 "	I. M. Muller, mortgage			600000
"	A'g't	24.	1 "	P. H. Mallett			10000
"	Ap'l	25.	1 "	P. H. Mallett			7500
"	March	7.	60 "	I. W. Morrell, Hiram Roberts			354229
"	Nov'b'r	4.	1 "	Francis McIntire, mortgage			300000
"	March	28.	1 "	H. M. R. Montruollin			25000
"	Nov'b'r	9.	30 "	Thomas M. Mellett, John P. Hogan, T. W. Neeley			605000
"	Oct.	27.	60 days.	Geo. W. Nicholls, A. Dutenhofer, I. H. Roberts.			605000
"	Nov.	1.	60 "	E. L. Neidlinger, I. S. Neilinger			283300
"	Sept.	3.	60 "	G. W. Neeley, B. McKinney, & confederate bonds			4130861
"	May	12.	1 day.	H. McNish, confederate bonds			220000
"	Sept.	19.	30 days.	G. W. Neely			250000
"	Oct.	11.	25 "	December. L. H. Parsons, Tison & Gordon ..			100000
"	May	20.	1 year.	Geo. M. Powers, Edw'd Powers, mortgage, & Hiram Roberts			200000
"	Oct.	6.	60 days.	Lewis S. Russell, 7 7-30 confederate tr'y notes.			50000
"	Oct.	17.	6 months.	C. D. C. Richard, Andrew Low			50000
"	Feb'y	17.	30 days.	C. B. Richardson, confederate bonds			161013.
"	Oct.	7.	1 "	C. B. Richardson, confederate bonds			800000
"	Oct.	27.	1 "	W. S. Rockwell, confederate bonds			710000
"	Oct.	31.	30 "	And M. Ross, $1,000, bank-bill			150000
"	Nov.	17.	60 "	I. N. Spratt	2530. 31		
				Paid at Macon, in Jan'y	2500. 00		
							3031.
"	Jan'y	5.	1 day.	Hiram Roberts, scrip M. & P. Bank			1500000
"	Oct.	17.	12 months.	D. H. Stewart, mortgage			428076
"	Sept.	29.	60 days.	F. H. Scarlett, F. L. Gue			500000
	1864. July	18.	60 days.	I. R. Sneed, T. A. Parsons			15000
18	1863. Nov.	9.	90 days.	Leopold Spieldock, mortgage			400000
	1861.		3 years.	W'm Sneed			153054
1864.	May	9.	6 months.	Lewis C. Tebeau, C. P. Pendleton & mortgage			1500000
"	Oct.	18.	60 days.	C. H. Williams, 10 7-30 confederate tr'y notes.			75906
"	Sept.	28.	90 "	Z. N. Winkler, 5 7-30 confederate tr'y note			40000
"	Nov.	1.	30 "	E. C. Wade, W. B. Adams			8000000
"	Oct.	31.	60 "	Kreuson & Hanks			150000
"	Dec.	6.	30 "	A. Barie			133000
"	Dec.	6.	30 "	C. W. W. Bruen			133000
"	Dec.	6.	30 "	John Screven, 3 notes			1300000
"	Dec.	6.	30 "	Hiram Roberts			234000
				Am't brought forward			52872555
1860.	Aug.	1.	1st day.	Jan'y next, Tho's M. Boston, JohnBoston			73500
1860.	Dec.	19.	60 days.	John Boston, Thomas Holcombe			60. 000.
1861.	Aug.	16.	4 mo's.	H. V. Collins, Davant & Lawton			42731
1860.	M'ch	31.	60 days.	W. S. Daniels, Daniels & Anderson			30362
1863.	Jan'y	17.	3 mo's.	Samuel Ham			200000
1860.	Sept.	13.	90 days.	Christopher Hussey, John Boston			20000
1860.	Jan'y	19.	30 "	E. J. Harden, Tho's H. Harden			32000
1861.	Feb'y	20.	30 "	E. J. Harden, A. R. Lawton			20000
1862.	Aug't	4.	60 "	W. B. Mall, Geo. W. Adams			35000
1861.	July	20.	6 mo's.	W. R. Philips & Co., Philips, Giles & Co., mortgage & collaterals, (a portion of the collaterals have been collected and stand to the credit on the books)			3300000
1861.	April	24.	60 days.	W'm F. Preston, Julian Hartridge			20000
1861.	Sept.	14.	60 "	G. C. Rice, Gir. Sav. Vol. Guards, John Screven			125000
1861.	M'ch	1.	1 year.	W'm Sneed			135354
1861.	M'ch	1.	4 years.	W'm Sneed			144202
1861.	Ap'l	24.	60 days.	I. R. Sneed, R. W. Alexander			20000
	1861. April	27.	60 days.	T. J. Walsh, mortgage bal			150000
19	1857. June	27.	90 days.	T. J. Walsh, S. H. Hooker, W'm Warner.			30000
	1860. Oct.	22.	30 "	E. G. Wilson, D. H. Stewart			75000
1857.	June	10.	12 mo's.	G. C. Gibbs, K. B. Gibbs, John I. Sammis			963525
1860.	Oct.	29.	45 days.	I. V. Pace, I. W. Furlan, T. M. Furlan, b'k scrip deposit			208750
1860.	Dec.	11.		S. A. H. Jones, Youngblood, Headman & Co., N. A. Hardee & Co			57084

NOTES IN THE HANDS OF ATTORNEYS WHERE THE DATES ARE NOT GIVEN.

	W. H. Banks, H. W. Banks			8750.
	I. G. Rogers, W. P. Way			218034
	Wells & Williams			140890
	W'm M. Fleming, John F. Falligant			50001
	W'm M. Fleming, John F. Falligant			50000
	Franklin & Brantly, R. H. Sims			1,061373
	A. H. McBain, I. P. Griffin			133648
	A. S. Cutts & Co			47466
	H. R. Christian, Geo. McBride Smith			290000
	R. S. Yarboro, N. Fisher & Co			200000
	Gannany & Champion, F. S. Pickerell			356115
1860. April 25.	Y. P. Pickard, W'm Wright		10000. 00	
	Cr. Oct. 26, 1860	2681		
	" Nov. 9, "	2510		
	" April 27, 1861	2500		
			7691. 00	
				230900
	Amount discounted notes			61402239
	Overdrafts			
	Atlantic & Gulf Railroad			71193
	A. Baine			2286
	A. V. La Roche			33187
	W'm Law			9000
	Tho's W. Neely			422906
20	E. Molyneaux			182893
	Hiram Roberts			631196
	F. J. Champion			146537.
	Amount brought forward			62901437
	C. h W. W. Bruen			504398
	Jo n R. McIntire			5000
	Th omas Holcombe			5000
	John Finlayson			150000
	A. Mayer			21500
	W. S. Walthom			95000
	H. M. R. Montucollin			8925
	C. B. Richardson			366478
	Geo. W. Wylly			7209.
	B. E. Guerard, 2 69; S. S. Burns, 1,500			150269
	I. Screver, Turner, Capt			32002
	Gilbert C. Rice, 59.50; H. M. Law, 24c			59 74
	W. L. Walthom			12858
	D. G. Pruse, 2.96; W'm Gabbitt, 59.23			6219
	H. K. Harrison			83134
	H. K. Harrison, executor			1,18730
	E. E. Hertz			1255
	G. Blankentornt			50000
	E. Lang			9989
	E. H. Mehrten's			1901
	Philips, Giles & Co			63190
	N. O. Wright			1900
	Alexander C. Wylly			841
	Coin			4181045
	Real estate banking-house, stands on the books			2117258
21	Lot at Americus, lot at Atlanta, lot at Rome; stands on the books			733631
	Due from banks—State Bank Charleston			10000
	Central Railroad & B'k'g Co		2605627.	2615627
	Due from Augusta, W. R. Philips	553. 39		
	O. P. Beall	768. 76		
	Lot bough' at sheriff's sale, stands as an advance to F. Brantley		275, 289	407, 5 4
				74, 657, 402.

One iron safe at Cuthbert, Ga.
One iron safe at Macon, Ga.
Two iron safes, at Savannah, Ga.
Recorded January 11th, 1867.

STATE OF GEORGIA,
Chatham County:

I, Richard W. White, clerk of the superior court of Chatham County, and State aforesaid, do hereby certify that the foregoing pages contain a true and faithful copy of the original deed of assignment and schedule as appears of record in county records, book Y. Y. Y., folios 220, 223.

In witness whereof I have hereunto set my hand and affixed the seal of this court, at Savannah, Georgia, this eighteenth day of June, A. D. 1869.

[SUP. C'T SEAL.] RICHARD W. WHITE,
Clerk S. C. C. C.

[Int. Rev. stamp. 5 cents.]

22 *Judge's order.* [Ent.

AT CHAMBERS, *Oct.* 14, 1869.

Let the defendants, on the 21st day of Oct. inst., at 10 a. m., at the U. S. court-room, at Savannah, Ga., show cause why the writ of injunction prayed for should not be granted and a receiver appointed.

JOHN ERSKINE,
U. S. Dist. Judge, Ga.

(Bill of complaint endorsed:) In the fifth circuit court of the United States, southern dist. of Georgia. September rules, 1869. Harvey Terry, complainant, *vs.* Merchants and Planters' Bank & Hiram Roberts. In equity. Filed July 12, 1869. Ja's McPherson, clerk. Stone, sol. for complainant. Final decree *vs.* The Merchants & Planters' Bank, April 29, 1870.

Subpœna in equity.

UNITED STATES OF AMERICA,
Southern District of Georgia:

HARVEY TERRY, COMPLAINANT,
and
MERCHANTS AND PLANTERS' BANK AND HIRAM ROBERTS, defendants. } In equity.

23 The President of the United States, to Merchants and Planters' Bank and Hiram Roberts:

For certain causes offered before the judges of the fifth circuit court of the United States for the southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined, that laying all other matters, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had on the first Monday in September next, to answer to those things which shall then and there be objected to you, and to do further and receive what the said court shall have considered in this behalf; and this you may in nowise omit under penalty of five hundred dollars, and have here this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twelfth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] JA'S MCPHERSON, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable; otherwise the bill may be taken pro confesso.

(Subpœna endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. September rules, 1869. In equity. Harvey Terry, compl't, and Farmers and Planters' Bank and Hiram Roberts, def'ts. Subpœna, original. Filed July 20, 1869. Ja's McPherson, clerk. A. W. Stone, compl't's solicitor.

24 *Service of subpœna.*

I have this day served the defendants, Merchants and Planters' Bank, Hiram Roberts, assignee, and Hiram Roberts, each personally, with copies of the within subpœna, at Savannah, Ga., July 20, 1869. The return of

C. T. WATSON,
U. S. Dep'ty Marshal.

Order for leave to amend bill.

In the fifth circuit court of the United States for the southern district of Georgia.

HARVY TERREY
vs.
MERCHANTS AND PLANTERS' BANK AND HIRAM Roberts. } In equity.

On motion of solicitor for complainant, it is ordered by the court that complainant have leave to amend his bill.

JOHN ERSKINE, *U. S. Judge.*

OCT. 22d, 1869.

(Endorsed:) Ent. 47. In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry vs. Merchants & Pl' Bank & Hiram Roberts, ass'ee. Leave to amend bill. Filed the 22d day of Oct. 1869. Ja's McPherson, clerk. Stone, pl'ff's att'y.

25 *Amendment to bill.*

In the fifth circuit court of the United States, southern district of Georgia.

HARVEY TERRY, WHO SUES FOR HIMSELF and other creditors of the Merchants & Planters' Bank,
vs.
MERCHANTS & PLANTERS' BANK AND Hiram Roberts, assignee. } In equity.

The complainant, by leave of the court first had and obtained, amends his bill in the above cause by adding after the word "control" the word "custody" in the third line from the bottom of the third page of said original bill.

Also by adding the word "books" after the words "of all the" in

the same line on the same page, and by adding said words "books and" after the word property in the third line from the top of the fourth page of said original bill.

Also by adding to the stating or charging part of said original bill the following, to be introduced after the words "by said assignee" in the fifth line from the bottom of the fifth page of said bill, to wit:

Your orator further showeth unto your honors that the said Hiram Roberts in addition to the books, assets, and property of said bank before mentioned, had in his possession and under his control a large amount of the bills of said bank amounting to the sum of four hundred thousand dollars, or some such large amount which had been redeemed by and with the assets and property of the bank before said as-
26 signment, then held and controlled as president of said bank until said assignment, and in the execution of the same went into his possession as assignee, and is now so held by him. That the assignee with the coin mentioned in the schedule attached to said assignment, realized from the assets that went into his hands as such assignee, has in hand, and has had for the space of three years, in cash and bonds, and other items, the sum of eighty or ninety thousand dollars or some such large sum of money, which is in his hands, and has been for a long time wholly unproductive, yielding no interest, except that which has accrued on the bonds, and that, to wit, said interest is a considerable amount, and ought to be productive, but is not in the hands of said assignee.

Your orator further states that the said Hiram Roberts has been heretofore and is now appropriating to his own use, and in his own business directly or indirectly, and to the use of said bank, and to the use and benefit of his co-stockholders, and other persons, a large portion of the funds so in his hands as such assignee. That he has so used directly portions of the same, loaned to others portions of the same, and pledged portions thereof as security for credits given, and that the same has not been all the while, and is not now, in the possession and control of said assignee by being on deposit or otherwise disconnected and unencumbered with the business of said assignee and that of all other persons, and is not in such a situation that the same can be produced and controlled by the said assignee.

27 And your orator further showeth that the said Hiram Roberts is largely indebted to the said bank by notes, bills, over-drafts, and other like liabilities to the amount of thirty-five thousand dollars or some such large sum, and was so at the time of said assignment.

And your orator further states unto your honors, and so charges, that the said Hiram Roberts is not only so indebted to said bank, but that he is largely indebted to other persons, to what amount is unknown to your orator, but is well known to said Hiram Roberts. But your orator charges expressly that such indebtedness is large, greatly exceeding the value of the property of the said Hiram Roberts, owned and claimed by him in his own name and right. And that the said Hiram Roberts is unable to pay his said large indebtedness, and as evidence of that fact your orator states and so showeth unto your honors that the said Hiram Roberts, on the fifteenth day of October, in the year eighteen hundred and sixty-nine, acknowledged service on a petition, writ, or declaration, returnable to November rules of the fifth circuit court of the United States for the southern district of Georgia, in the year eighteen hundred and sixty-nine, in favor of Francis L. Lathrop, and on the same day, to wit, on the said fifteenth day of October, in the year last aforesaid, confessed judgment to said Lathrop for the sum of forty-

five thousand dollars, principal and interest amounting in the
28 aggregate to the sum of fifty-five thousand dollars, or some such large sum of money, upon which judgment execution has issued, and placed in the hands of the attorney for the plaintiff, as will more fully appear by reference to Exhibit D, hereto annexed, and which your orator asks may be taken as a part of this his amended bill, with leave of reference thereto as often as may be necessary. From all of which actings and doings it is manifest, and so your orator expressly charges and states, that the large and valuable fund in the hands of the said Hiram Roberts, who has never given any security, or made any returns or exhibits of his actings and doings as required by law, is unsafe, insecure, and in imminent danger of being wasted, misappropriated, misapplied, and a total loss to those entitled to the same.

And your orator charges that such will be the case unless prevented by the timely interference of your honors in the manner requested in his said original bill, or in some other manner which to your honors may seem more appropriate and proper.

And your orator prays that the said defendants may answer said amended bill as fully as if the same was hereinafter repeated and they thereunto specially interrogated; and that in the same manner as to remembrance, information, and belief, as required in said original bill. And that the said defendant, Hiram Roberts, may fully answer and set forth—

29 First. Whether he was not the president of the said Merchants & Planters' Bank at the time of making said assignment, and whether, in the execution of said assignment and acceptance by him, the possession and control of all the property, assets, and books of said bank did not pass to him as such assignee, and if the same is not now so held by him.

Second. Whether there was not in said bank at the time of the execution of said assignment a large amount of the bills of said bank which had been redeemed by said bank and with its assets. And what amount of such bills and whether they did not also pass into the possession of the said Roberts, as such assignee, at the time and in the same manner as did the assets and books of said bank, and whether the same are now in the possession of said assignee. If not, what disposition has been made of them.

Third. Whether the funds and property of said bank so assigned to the said Hiram Roberts, and more especially the coin and other money coming into his hands from any source whatever, or any portion thereof, has been at any time or in any manner whatever used, appropriated, loaned, hypothecated, or in any other manner applied to any use or purpose whatever. If so, what portion so used and what use made of it, and when so used, and for how long a period.

Fourth. Whether the said coin and other money coming into the hands of the said assignee as such has been from the time of its receipt to the present time, and is now, on deposit in a place of safety disconnected and unencumbered with the private business of the
30 said Hiram Roberts, and that of all other persons, or any contract, arrangement, or understanding of the said Roberts or of any other person, of any kind, other than that of a general depositor. And whether the said money has all the time and now is in such a situation and position that the same can be had and forthcoming on the mere application, without more, of the said assignee, and where the same is at this time, its situation, position, and condition.

Fifth. Whether the said defendant, Hiram Roberts, was not at the

time of said assignment, and now is, a debtor to said bank, and to said trust is liable thereto in some shape and for a large amount of money, to wit: Thirty-five thousand dollars, or some such large sum, and what the shape and form of such indebtedness. And if any portion of the same has been paid, when paid, and to whom paid, when and in what manner settled, and to and with whom settled or arranged.

Sixth. Whether the indebtedness of the said Hiram Roberts at this time is not greater than the value of the property held by him in his own right. And that he may set forth distinctly and definitely, in the shape of a schedule, or in some other manner, the property so owned by him, and its value. Also the amount of his indebtedness exclusive of such as may arise from the trust created by said assignment, and that he may the answer the premises fully.

A. W. STONE,
WILLIAM DOUGHERTY,
Solicitors for Complainant.

31 *Oath to amended bill.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Chatham County:

Before me in person came Harvey Terry, the complainant in the foregoing amended bill, who, being duly sworn, on oath says that the matters and things set forth in said original bill and the foregoing amendment thereto, so far as the same relate to his act and deed, is true, of his own knowledge, and so far as the same relate to the acts and deeds of others he believes them to be true.

HARVEY TERRY.

Sworn to and subscribed before me this 12th day of November, A. D. 1869.

JA'S MCPHERSON, *Clerk.*

EXHIBIT D.—*Declaration.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

To the honorable the judges of the 5th circuit court of the United States for the southern district of Georgia:

The petition of Francis L. Lathrop, who avers himself to be a citizen of and residing in the State of New York, in the said United States of America, sheweth that Hiram Roberts, who your petitioner avers to be a citizen of and residing in the State of Georgia, in the
32 said southern district of Georgia, in the United States of America, is indebted to your petitioner in the sum of forty-five thousand dollars, exclusive of interest; for that whereas the said Hiram Roberts heretofore, to wit, on the fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty-six, at the city of New York, to wit, in the southern district of Georgia, aforesaid, made his certain promissory note in writing, bearing date the day and year aforesaid, and thereby promised, for value received, to pay to the order of I. B. Haldermann, the said I. B. Haldermann being then and there being (?) a citizen of and residing in said State of New York, the sum of twenty-five thousand dollars, with interest at the rate of seven per cent. per annum, six months after the date thereof, which period has now elapsed, and then and there delivered said note to said I. B. Haldermann, who then and there endorsed and delivered the same to

your petitioner, whereby the said Hiram Roberts became liable to pay to your petitioner the said sum of money in said note specified, according to its tenor and effect, and then and there, in consideration of the premises, promised your petitioner to pay the said sum of money specified in the same, according to the tenor and effect thereof.

And for that whereas also the said Hiram Roberts heretofore, to wit, on the tenth day of September, in the year of our Lord one thousand eight hundred and sixty-six, at the city of New York, to wit, in the southern district of Georgia, aforesaid, made his certain other
33 promissory note in writing, bearing date the day and year last aforesaid, and thereby promised, for value received, to pay to W A. Kinnelly, or order, the said W. A. Kinnelly then and there being a citizen of and residing in said State of New York, the sum of twenty thousand dollars, ten days after the date thereof, which period has now elapsed, and then and there delivered the said note to said W. A. Kinnelly, who then and there endorsed and delivered the same to your petitioner, whereby the said Hiram Roberts became liable to pay to your petitioner the said sum of money in said note specified, according to its tenor and effect, and then and there, in consideration of the premises, promised your petitioner to pay the said sum money specified in the same, according to the tenor and effect thereof.

And whereas the said Hiram Roberts afterwards, to wit, on the day and year last aforesaid, at New York, to wit, in the southern district of Georgia aforesaid, in consideration of the said several premises respectively, then and there promised to pay the said several moneys respectively to your petitioner on request; yet he has disregarded his promises, and has not paid any of the said moneys in this petition mentioned, or any part thereof, to your petitioner, to your petitioner's damage of sixty thousand dollars, and thereupon he brings suit, &c.

Wherefore your petitioner prays process may issue, requiring the said Hiram Roberts to be and appear at the clerk's office of said county, in the city of Savannah, at rules to be had on the first Monday in November next, to answer in the premises.

LAW, LOVELL & FALLIGANT,
Attorneys for Petitioner.

34 *Copy notes.*

Dolls. 25,000 $\frac{00}{100}$.] NEW YORK, *February 15th*, 1866.

Six months after date I promise to pay to the order of I. B. Haldermann, at the National City Bank, at the city of New York, twenty-five thousand dollars, with interest at seven per cent. per annum, for value received.

(S'g'd) HIRAM ROBERTS.

(Endorsed:) I. B. HALDERMANN.

[U. S. Rev., $12.50.]

Dolls. $20,000 $\frac{00}{100}$.] NEW YORK, *September 10th*, 1866.

Ten days after date, I promise to pay to W. A. Kinnelly, or order, at the National Bank of Commerce, in the city of New York, twenty thousand dollars, for value received.

(S'g'd) HIRAM ROBERTS.

(Endorsed:) WILLIAM A. KINNELLY, 99 *William Street.*

(Written across the face:) Paid by W. A. Kinnelly.

J. B. HUSSANS,
Ass't Teller.

[U. S. Rev., 10 dollars.]

Confession of judgment.

And now, before the clerk of the said court, comes in person the said defendant, Hiram Roberts, and confesses the aforesaid action, and that the said plaintiff hath sustained damage to the amount of forty-five thousand dollars, principal debt, and interest on twenty-five thousand dollars from the fifteenth day of February, eighteen hundred and sixty-six, and interest on twenty thousand dollars from the twenty-third day of September, eighteen hundred and sixty-six, by reason of the non-performance by said defendants of his said several promises and
35 undertakings in said declaration set forth. And the said defendant now here confesses judgment to the said plaintiff for the damages sustained by the plaintiff as aforesaid, and for the costs of his said suit, to be duly taxed.

HIRAM ROBERTS.

Judgment taken and confessed by the defendant before me this fifteenth day of October, 1869.

JAMES McPHERSON, *Clerk.*

(Petition, &c., endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. November rules, 1869. Francis L. Lathrop vs. Hiram Roberts. Original writ. Legal service acknowledge; process, copy writs, & process waived; October 15, 1869; Hiram Roberts. Filed the 15th day of October, 1869; James McPherson, clerk. Law, Lovell and Falligant, pl'ff's att'ys. Judgment confessed before clerk, Oct. 15, 1869.

Copy fieri facias vs. Roberts.

(L. S. OF THE COURT.)

UNITED STATES OF AMERICA,
Southern District of Georgia,
Fifth Circuit Court.

The President of the United States to the marshal of the district of Georgia, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements, of Hiram Roberts you cause to be made the sum of forty-five thousand dollars, principal, with interest on twenty-five thousand dollars from February fifteenth, eighteen hundred and sixty-six,
36 and interest on twenty thousand dollars from September twenty-third, eighteen hundred and sixty-six, which Francis L. Lathrop lately, to wit, on the 15th day of October, A. D. 1869, in the fifth circuit court of the United States for the southern district of Georgia, recovered against him for his damages which he had sustained on occasion of the not performing certain promises and undertakings then lately made by the said Hiram Roberts to the said Francis L. Lathrop, and also nineteen dollars and twenty cents, which in the said court were adjudged to the said Francis L. Lathrop for his costs and charges by him about his suit in that behalf expended, whereof the said Hiram Roberts was convicted, as appears of record; and have you the money before the judges of said court in the term of April next, to render to the said Francis L. Lathrop, for his damages, costs, and charges aforesaid, together with this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme

Court of the United States, this first day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

LAW, LOVELL AND FALLIGANT,
Pl'ff's Att'ys.

Acknowledgement of service of amended bill.

We acknowledge due and legal service of a copy of this amendment to the original bill, November 12th, 1869.

LAW, LOVELL & FALLIGANT,
Solicitors for Defend't.

37 (Endorsement to foregoing amended bill:) In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry, complainant, vs. Merchants & Planters' Bank & Hiram Roberts, assignee. In equity. Amendment to bill. Filed the 12th day of November, 1869. Ja's McPherson, clerk. A. W. Stone & W'm Dougherty, sol's for complainant.

Order for injunction and hearing at chambers.

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY
vs.
MERCHANTS & PLANTERS' BANK, & HIRAM Roberts, assignee. } In equity.

Application for injunction and a receiver.

On motion of counsel for complainants in the above-entitled cause it is ordered by the court that the defendants answer said bill on or before the first Monday in Dec'r, 1869.

And that the said application be heard before this court at chambers, in Savannah, as soon as the judge can hear argument.

And that until a hearing in said cause the said Hiram Roberts, assignee, be, and is hereby, restrained from distributing or disposing of the assets of the said bank, or any portion thereof. Be it so.

JOHN ERSKINE, *U. S. Judge,*

38 (Endorsement on foregoing order:) In the fifth circuit court of the United States, southern district of Georgia. Harvey Terry vs. Merchants & Planters' Bank & Hiram Roberts, assignee. In equity. Order for injunction and hearing at chambers. Filed Nov. 19, 1869. Ja's McPherson. A. W. Stone, sol'r for complainant.

Order appointing receiver, &c.

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY
vs.
MERCHANTS & PLANTERS' BANK, & HIRAM Roberts, assignee. } In equity.

Motion for a receiver.

The motion for a receiver having been heard and considered, it is

ordered and decreed that Alexander N. Wilson be, and is hereby, appointed the receiver of this court, to receive, collect, keep, and dispose of the property and assets of the said Merchants & Planters' Bank, under the direction and order of this court.

The said receiver shall, before entering on the duties of his office, execute and file his bond, with sureties approved by this court, with the clerk of this court, in the sum of one hundred and fifty thousand
39 dollars, conditioned for the faithful performance of his duties as receiver and his obedience to all orders and decrees of this court in the premises.

The said receiver shall forthwith proceed to collect all the debts and assets of the said bank. and to that end is authorized to use the name of the said assignee thereof.

And the said Hiram Roberts, assignee, as aforesaid, is hereby directed to deliver under oath to said receiver forthwith all the assets, property, and effects of said bank, and all the books, papers, title-deeds, securities, and memoranda connected with and explanatory of the business of said bank in his possession or in the possession of his clerks, agents.

And the said defendant is, and his agents and attorneys are, hereby enjoined from all interference with the property, assets, and effects of said bank and its affairs beyond the delivering over of the same to the said receiver.

JOHN ERSKINE,
U. S. Judge, Georgia.

SAVANNAH, GA., 7*th January*, 1870.

(Endorsed:) U. S. cir. court, so. dist. of Geo. In equity. Harvey Terry, comp't, and Merch'ts & Pl'trs' Bank, and Hiram Roberts, ass'ee, def'd'ts. Order appointing receiver, &c. Granted, entered, and filed January 7, 1870. Ja's McPherson, clerk.

40 *Answer of Hiram Roberts.*

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY, COMPLAINANT,
and
THE MERCHANTS AND PLANTERS' BANK AND Hiram Roberts, defendants.

The separate answer of Hiram Roberts.

This defendant, now and at all times hereinafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer unto, he answereth and saith, that he admits it to be true, as in said bill is charged, that a deed of assignment was made by the Merchants and Planters' Bank to this defendant, and that he accepted the trust; but this defendant says that the schedule annexed to the copy of the assignment attached to said bill is very incorrect in many particulars, for the correction of which errors this defendant refers to Exhibit A to this his answer annexed as containing a true and correct statement of the original schedule attached to the said original assignment.

This defendant, further answering, says that he did at once enter upon the duties and execution of the trusts under said assignment and took possession of the assets and property of said bank conveyed to
41 him by said deed of assignment, and that all the assets, property, and gold coin of every description which came into this defendant's hands and was taken possession of by him under said assignment are set forth particularly in the schedule attached to said deed of assignment, copy of which is hereto appended, in said Exhibit A, to this answer appended.

And this defendant, further answering, saith that some of the real-estate property of the said bank assigned has been sold and disposed of, all of which, and for what consideration and price and to whom and when will be fully shown and appear by reference to said Exhibit A hereto attached. He further says that he has not delivered over or paid to any creditor of the said bank any portion of the money, property, effects, or assets assigned.

Further answering, this defendant, answering, says that he has paid no debts of the bank, and that Exhibit A, to this answer attached, contains a statement of the indebtedness of said bank at the time of making said assignment, to whom indebted, the names of the parties, and the amounts of said debts due.

And further answering, this defendant says that the amount of the circulation of the bank when the assignment was made, and what amount has been retired, and what amount this defendant knows of his own knowledge, or has been notified of, now in the hands of other persons, or claimed by them, are all particularly set forth in Exhibit A, to this, his answer, annexed.

42 This defendant cannot say what the circulation is now, because he cannot say how many of said bills may have been destroyed by the late war.

A memoranda forming part of schedule in Exhibit A hereto attached, shows the amount of the bills and notes presented for pro rata payment under the order of the superior court of Chatham County, and notice to holders by publication of said order.

Further answering, this defendant says that the debts due to the bank, and by whom due, and which are in the hands of the attorneys of this defendant, and in process of collection, will all particularly appear as set forth in said Schedule A hereto attached.

And this defendant says that an injunction was laid upon him under a motion to set aside the assignment made in the superior court of Chatham County; that he did not have permission to collect until some time after the injunction was laid upon him; and that since that permission he has used due diligence to make collection, but that under the then laws of Georgia, it is, and has been, difficult to do.

And this defendant further says that the assets of said bank assigned to him, and undisposed of as stated, are in his hands, and in the hands of his attorneys for collection as before stated, ready to be accounted for and produced as this honorable court shall order and direct.

And this defendant, further answering, says that his indebtedness to the bank will be shown and appear from Exhibit A hereto an-
43 nexed. But this defendant says that the said bank is indebted to this defendant in a large amount for furnishing transportation, and attending to removing the assets; and for bills that this defendant now holds, and moneys advanced, and for checks that he holds which cancel the overdraft against him, this defendant, which will fully appear by reference to Exhibit to this answer appended, and which had not been adjusted at the time of the assignment.

And this defendant, further answering, says that the list of stockholders, with the number of shares held by each, and the amounts respectively paid by each, are specially set forth in Exhibit A hereto attached.

This defendant, further answering, says there was a large amount of the bills of the bank redeemed previously to the assignment, viz, about one hundred and eighty-two thousand five hundred and sixty-three dollars ($182,563.00,) and that the same came into and still is in his possession.

And this defendant, further answering, says that he has in no way attempted or endeavored to depreciate the value of the bills of said bank, but that any depreciation, if such there be, must have been caused and produced by other circumstances beyond the control of this defendant, and with which he had no connection whatsoever.

And this defendant, further answering, says that, to the best of the knowledge and belief of this defendant, the said bank-bills for which payment is sought in and by the said bill of complaint were issued directly to the late Confederate States of America, and the State of Georgia, for the purpose and with the intent of carrying on the rebellion against the United States of America, and were so used and employed, or issued for bonds and notes of the said Confederate States and State of Georgia, which said bonds and notes were so issued for carrying on the said rebellion, and that the said bank-bills so issued were and are utterly illegal and void; of all of which facts as aforesaid this defendant has reason to believe, and does believe, the complainant had full knowledge when he acquired said bills; and, that said bills were issued to the Confederate States and State of Georgia under a pressure and coercion from the peculiar condition of the country, being in a state of war, from applications, requisitions, and demands made upon said bank by both the governments of the Confederate States and State of Georgia, and under circumstances of external pressure and compulsion which it was unable to resist. And this defendant submits whether, as assignee as aforesaid, he can be held and bound for the payment of said bills so illegally issued and used, and consequently void.

44

And this defendant, further answering, says that, inasmuch as he is charged in the bill of said complainant with mismanagement and certain other actings and doings contrary to his duty as assignee as aforesaid, all of which this defendant denies; yet this defendant is willing and desires to resign said trust, and will so do, and transfer the assets committed to his charge under said assignment to an assignee to be appointed by this honorable court in lieu of this defendant and substituted in place of this defendant as assignee as aforesaid, under the trusts of said assignment, and acceptable to the cestue qui trusts under said assignment can be so appointed to accept said trusts and receive and receipt for said assets.

45

And this defendant denies all and all manner of *of* combination and conte'eracy with which he stands charged, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

LAW, LOVELL AND FALLIGANT,
Defendant's Solicitors.

Oath to defendant's answer.

GEORGIA, *Chatham County:*

Personally appeared Hiram Roberts, defendant in the answer aforesaid, who, being duly sworn, deposes and says that the facts set forth in

his foregoing answer, so far as they relate to his own act or deed, are true of his own knowledge, and so far as they relate to the act or deed of any other person or persons he believes the same to be true.

HIRAM ROBERTS.

Subscribed and sworn to before me this sixth day of December, 1869.

JA'S McPHERSON, *Clerk.*

(Endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry, complainant, and The Merchants and Planters' Bank and Hiram Roberts, defendants. Answer of Hiram Roberts. Filed Dec. 6, 1869. Jas. McPherson, clerk.

LAW, LOVELL & FALLIGANT,
Defendant's Sol's.

46 EXHIBIT A.

Statement of notes placed in the hands of Mess. Law. Lovell & Falligant, by Hiram Roberts, assignee.

1864.	Nov.	30.	1	day	Charlotte Branch	3,100	91
"	Aug.	19.	60	"	T. A. Bandy 2,000 / 1,000	1,000	
1863.	Sept.	1.	30	"	A. Bonand	2,012	65
"	June	13.	4	mos.	A. Bonand	2,000	
1864.	Ap'l	12.	1	day	W. W. Billups	300	
"	July	12.	1	"	John S. Bryant	300	
"	Nov.	23.	60	"	E. Baynan, T. H. Verderee, P. H. Behn	2,000	
"	Oct.	19.	90	"	W. H. Bulloch	300	
"	Sept.	9.	1st	Jan'y	F. W. Bailey	714	36
"	Nov.	15.	30	d's	Bell & Christian, J. D. LaRoche	20,000	
"	Oct.	14.	60	"	W. H. Burroughs	2,000	
"	Nov.	10.	30	"	C. W. Bruner, D. Lathrop	5,000	
"	Aug.	20.	30	"	M. Cleary	301	90
1863.	May	9.	6	mos.	W. M. Charters	1,900	
1859.	May	27.	May 27, '64, G. C. Carmichael			1,566	85
1864.	Nov.	2.	90	days	Marg't Charlton	520	
"	Sept.	24.	90	"	R. Cogdell, W. M. Davidson	2,000	
"	Nov.	18.	30	"	W. B. Adams, F. J. Champion	5,031	65
"	Oct.	6.	60	"	J. H. Zeilin, F. J. Champion	10,000	
"	Jan.	21.	60	"	A. Dutenhofer, M. J. Jewett	15,000	
"	Jan.	14.	60	"	A. Dutenhofer, M. J. Jewett 15,000 / 12,000	3,000	
"	Sep.	2.	1	"	M. A. Dillon	500	
"	Nov.	30.	1	"	M. A. Dillon	500	
"	Nov.	2.	60	"	W. R. Fleming, Ja's Gardiner	2,024	17
"	Feb'y	8.	4	mos.	L. A. Falligant	2,560	40
1863.	May	28.	60	days	Martin J. Ford	300	
"	Sep.	2.	60	"	Martin J. Ford	200	
1864.	Ap'l	23.	30	"	L. J. B. Fairchild	16,000	
					Amount carried forward		

47				Am't bro't forward			
1864.	Oct.	22.	60	do. M. Hackett, J. M. Henderson		300	
"	Oct.	28.	90	" Julian Hartridge, A. S. Hartridge		2,060	
"	Oct.	26.	60	" W'm Heidt, E. L. Neidlinger		5,000	
"	Oct.	31.	90	" Julian Hartridge, A. S. Hartridge		4,073	67
"	Sept.	29.	3 mo's,	Elliott C. Johnson		400	
"	Sept.	28.	60 days,	W. B. Jackson, J. M. B. Lovell		500	
"	Oct.	8.	60	" Geo. J. Kollock, Geo. Jones		500	
"	Nov.	29.	30	" C. Lopez, J. O. Bartels, W. H. Wiltberger & Co		5,000	
"	Oct.	20.	60	" L. M. Lamar, W. H. Wiltberger & Co		1,347	50
"	Oct.	25.	60	" D. & E. S. Lathrop, J. S. Rodgers		5,000	
"	Oct.	26.	60	" J. D. La Roche, J. F. Wheaton		5,000	
"	Nov.	1.	60	" D. Lathrop, C. W. Brunner		10,000	
"	June	30.	6 mo's,	Luffburrow & Timmons, M. Luffburrow		25,000	
"	Sep.	29.	1st Jan'y next,	Henry M. Law, W'm Law		254	64
"	Nov.	3.	60 d's,	D. & E. S. Lathrop, J. S. Rogers.		5,000	
"	Nov.	2.	60	" D. Lathrop, C. W. Brunner		10,000	
"	Nov.	19.	60	" S. S. Law, W'm Law		100	
"	Oct.	18.	60	" J. D. La Roche, J. Lama	80,966 57		
"	Oct.	14.	60	" J. D. La Roche, J. Lama	49,393 90		
					130,360 47		
				Jan'ry 9th, 1865, cr	127,066 65	3,293	82
"	Sep.	7.	On demand	C. A. L. Lamar, G. B. Lamar		100,000	
"	Oct.	28.	1 day,	W'm Law, confed's bonds		1,518	12
"	Oct.	15.	1	" W'm Law, confed's bonds		3,000	
"	Oct.	14.	60	" J. M. McIntosh, F. L. Gue		300	
"	Nov.	23.	60	" J. McCready, J. C. Footman		101	21
"	Oct.	31.	30	" J. M. Muler, mortgage		6,000	
"	Oct.	28.	30	" J. M. Muler, mortgage		6,000	
"	Oct.	24.	1	" P. H. Mallett		100	
"	Ap'l	25.	1	" P. H. Mallett		75	
				Amount carried forward			
48				Am't bro't forward			
1864.	M'ch	7.	60 days,	Jno. Morrell, H. Roberts		3,542	29
"	M'ch	28.	1	" H. M. R. Montmollin		250	
"	Nov.	9.	30	" T. M. Millett, J. Hogan, T. W. Neeley		6,050	
"	Oct.	27.	60	" Geo. N. Nicholl, A Dutenhofer, J. H. Roberts		2,833	
"	Nov.	4.	1	" Francis McIntire		3,000	
"	Nov.	1.	60	" E. L. Neidlinger, J. S. Neidlinger		6,000	
"	Sep.	3.	60	" T. W. Neeley, W. B. McKinnon.		41,308	61

"	May.	12.	1 " N. McNish, confed's bonds....	200	
"	Sep.	13.	30 " T. W. Neely	2,500	
"	Oct.	11.	Dec. 25, L. H. Parsons, Tison & Gordon.	1,000	
"	Oct.	6.	60 days, L. S. Russell.....	500	
"	Oct.	17.	6 mos., C. D. C. Rhind, A. Low.....	500	
"	Feb'y	17.	30 d's, C. B. Richardson.....	1,610	13
"	Oct.	7.	1 day, C. B. Richardson.....	8,000	
"	Oct.	27.	1 " W. S. Rockwell.....	715	
"	Oct.	31.	30 " And. M. Rose, $1,000 bank-bills. 2,530 31	1,500	
"	Nov.	17.	60 " J. W. Spratt paid in Macon 2,500	30	31
"	July	5.	1 " Hiram Roberts, M. & P. Bank-scrip	15,000	
"	Oct.	17.	12 mos., D. H. Stewart, mortgage.....	4,280	76
"	Sep.	29.	60 d's, F. B. Scarlett, F. L. Gue.....	5,000	
"	July	18.	60 " J. R. Sneed, T. A. Parsons	150	
1863.	Nov.	9.	90 " L. Spreldock, mortgage	4,000	
1861.	M'ch	1.	3 y'rs, W'm Sneed.....	1,530	54
				409,566,	49
49			Amount forward.....	409,566,	49
1864.	Oct.	18.	60 days, C. H. Williams, conf. tr. notes.	759	06
"	Sep.	28.	90 " Z. M. Winkler.....	400	
"	Nov.	1.	30 " E. C. Wade, W. B. Adams....	80,000	
"	Oct.	31.	60 " Kreuson & Hawks.....	1,500	
1860.	Aug.	1.	1st Jan'y next, Tho's Boston, Jno. Boston.....	735	
"	Dec.	19.	60 d's, Jno Boston, Tho's Holcomb....	600	
1861.	Aug.	16.	4 mo's, A. V. Collins, Darant & Lawton	427	31
1860.	M'ch	31.	60 d's, W. S. Daniels, Daniel & Anderson	303	62
1863.	Jan'y	17.	3 mo., Sam. Ham.....	2,000	
1860.	Sep.	13.	90 d's, C. Hussey, John Boston.....	200	
1860.	Jan.	19.	30 d's, E. J. Harden, Tho's H. Harden..	320	
1861.	Feb'y	20.	30 " E. J. Harden, A. R. Lawton	200	
1862.	Aug.	4.	60 " W. B. Mell, G. W. Adams.....	350	
1861.	July	20.	6 mo's, W. R. Phillips & Co., Phillips, Giles & Co	33,000	
1861.	Ap'l	24.	60 d's, W. F. Preston, J. Hartridge....	200	
1861.	Sep.	14.	60 " G. C. Rice, sec. & treas.....	1,250	
1861.	M'ch	1.	1 year, W'm Sneed	1,353	54
1861.	M'ch	1.	4 " W'm Sneed	1,442	02
"	Ap'l	24.	60 d's, J. R. Sneed, P. W. Alexander..	200	
"	Ap'l	27.	60 " T. J. Walsh, balance.....	1,500	
1857.	June	27.	90 " T. J. Walsh, S. A. Hooker, W'm Warner	300	
1860.	Oct.	22.	30 " E. G. Wilson, D. H. Stewart....	750	
1857.	June	10.	12 mo's, G. C. Gibbs, R. B. Kibbs, J. S. Samins	9,635	25
1860.	Oct.	29.	45 d's, J. V. Price, T. W. Furlon, T. M. Furlon	2,087	50
1860.	Dec.	11.	60 " S. A. H. Jones & others.....	570	84
			W. H. Banks.....	87	50
			J. G. Rogers, W. J. Way	2,180	34

			Wells & Williams		1,408 90
			W. M. Fleming, S. G. Falligant		500
			Amount carried forward		
50			Am't bro't forward		
			W. M. Fleming, S. G. Falligant		500
			Franklin & Brantly, R. H. Sims		10,613 73
			H. R. Christain, G. McBride Smith		2,900
			R. S. Yarboro, N. Fisher		2,000
			Y. S. Baker, W'm Wright bal		2,309
			In the hands of Law, Lovell & Falligant		572,150 10
			A. H. McBride, J. P. Griffin	1,336 48	
			A. S. Cutts	474 66	
			In the hands of J. J. Scarborough	1,811 14	1,811 14
			Gannany & Champion		
			Merchants' National Bank Baltimore		3,561 15
1864.	Nov.	3.	1 day, N. P. Crowell		1,000
1863.	Dec.	1.	12 mo's, W. H. Hanley		500
1864.	M'ch	20.	1 ye., Geo. M. Powers, Edw. Powers		2,000
"	May	9.	6 mo's, L. C. Tebeau, C. P. Pendleton		15,000
			The above four notes settled $18,500		
			A. Barie	1,330 00	
			C. W. W. Bruen	1,330 00	
			John Screven	13,000	
			Hiram Roberts	2,340	
				18,000 00	18,000
			Amount carried forward		614,022 39
51			Amount forward		614,022 39
			Overdrafts:		
			Atlantic & Gulf Railroad		711 93
			A. Barie		22 86
			A. V. La Roche		331 87
			W'm Law		90
			Tho's W. Neely		4,229 06
			E. Molyneux		1,828 93
			Hiram Roberts		6,311 96
			F. I. Champion		1,465 37
			C. W. W. Bruen		5,043 98
			John R. McIntire		50
			Tho's Holcombe		50 30
			John Fuelayson		1,500
			A. Mayer		215
			W. L. Waltham		950
			H. M. R. Montmollin		89 25
			C. B. Richardson		3,664 78
			G. W. Wylly		72 09
			B. E. Guerard		2 69
			S. L. Bivins		1,500

J. Screven Turner, capt	320	
Gilber C. Rice	59	50
H. M. Law		24
W. S. Walthom	128	58
D. G. Purse	2	96
W'm Gabbitt	59	23
H. K. Harrison	831	34
H. K. Harrison, exe'r	1,187	30
E. E. Hertz	12	55
Amount carried forward		
52 Amount bro't forward		
G. Blankenhorn	500	
E. Lang	99	89
E. H. Menhitens	19	01
Phillips, Giles & Co	631	90
N. O. Wright	10	
Alex'r C. Wylly	8	41
Coin	41,810	45
Banking house & lot as on books	21,172	58
Lot at Atlanta, " " Americus, " " Rome,	7,336	31
State Bank, Charleston	100	
Central R. Road Bank	26,056	27
W. R. Phillips, agent	553	39
O. P. Beall	768	76
Lot bought at sheriff's sale stands as an advance to F. & B	2,752	89
Amount, schedule assignment	746,574	02
Recapitulation of notes in the hands of—		
Law, Lovell & Falligant	572,150	10
J. J. Scarborough	1,811	14
Merchants' National B'k, Baltimore	3,561	15
In the hands of Hiram Roberts. 18,500		
" " " " " " . 18,000	36,500	
53 Amounts due depositors:		
W. B. Adams	237	26
Geo. J. Kollock		67
C. W. W. Bruen, treas	91	53
Mrs. R. A. Beall	1,276	16
John Parsons	794	55
John Snider	2,040	
W. S. Chisholm	2,557	44
W. H. Hickman	2,725	73
A. R. Hannon	1	77
Camilla Boston	500	
R. M. Williamson	508	68
J. M. B. Lovell	10,863	78
Phillips, Giles & Co	6,876	46
Ann Cain	70	50
C. D. C. Rhind	31	77
Mrs. Charlotte Branch	3,551	50
W. J. Kelly, Conf. St's treas	35	

B. Constantine	511	62
Mrs. P. Mallett	351	67
Solomon Zeigler	81	51
J. P. Sanderson	1,519	98
I. S. Tison	1,925	
W. S. McFarland	39	76
J. H. Roberts	7,550	63
A. T. Cunningham	450	
Julian Hartridge	23	61
A. T. Cunningham	215	21
H. Gowdy	150	61
W'm Heidt		36
W. B. Lawton	1,234	93
Amount carried forward		
54 Amount bro't forward		
D. & E. S. Lathrop	10	
C. W. W. Bruen, exe'r	346	15
Rev. J. F. O'Neill	1,415	
Law & Lovell	3,439	37
Alex. F. Bennett	1,004	60
C. E. Groover	3,368	76
W. H. Wiltberger	5,352	
S. Goodall, tax-col	121,244	70
F. E. Hertz	515	56
I. D. La Roche	4,826	51
W'm Gabbitt	400	
D. W. Orr	156	00
Champion & Freeman	35	44
Geo. H. Johnston, tr. St. John's church	350	
Anthony Barclay	8,950	49
Geo. P. Harrison	377	50
G. H. Johnston, tr	546	40
Deposits from old ledger		
M. J. Buckner	39	55
M. J. Buckner, tr	6	60
A. Reppard	31	98
Anna R. Hannon, ex'r		53
W. H. Wiltberger	16	61
A. Barie, cashier	1,118	23
Mrs. H. F. Tattnall	81	90
J. C. Lee	50	
J. C. White, sheriff	622	14
T. C. Bowles	47	78
John Brooks	2	
Amount carried forward		
55 Amount bro't forward		
Mrs. Charlotte Branch	12	65
A. Bolineau	4	53
Asa Clark	1,274	90
S. Goodall	50	
Geo. Hall	10,800	
I. T. Jones	34	
L. Legriel	204	
I. A. Norris, ag't	578	
Morris Cohen	64	
W. McCormick	30	

	Geo. Cromwell	50	
	A. P. Langston	87	50
	D. C. Acosta	50	
	E. H. Bacon	25	
	R. J. Davant, jr	75	
	Geo. Jones & Geo. J. Kollock	50	
	J. Lama	50	
	W. A. Wylly	87	50
	C. Wilbur	3	50
	C. Werner	22	73
	B. L. Cole, sheriff	54	77
	R. W. Cope, clerk of council	33	01
	Doc. T. Y. Clark	94	25
	P. L. Constantine		38
	E. R. Young	40	
	Capt. W. H. Jernigan	24	
	Cooper & Gilliland	1	62
	Cohen & Hertz		80
	I. P. O'Neil	46	43
	Amount carried forward		
56	Amount bro't forward		
	G. H. O'Neil	39	79
	S. L. Varnadoe	91	
	Carmichael & McDuffie	51	22
	S. M. Colding	10	11
	Lewis Davis & Bro	27	23
	Lewis P. Turner	7	35
	R. W. Cope	4	11
	W. G. Foote	50	02
	John Parsons	35	79
	L. A. Falligant	8	32
	Finlayson & McRae	1	21
	Charles Grant		49
	B. F. Green	50	
	H. Hirsch	2	65
	W. W. George	39	60
	McGrath & Henry		96
	M. Luffburrow	48	25
	W'm Green	22	49
	J. R. Sneed, depository	48	84
	Tho's J. Pitt	2	62
	W'm Starr	3	40
	R. Habersham & Son	50	50
	Geo. P. Harrison	77	66
	Geo. P. Harrison, chairman	21	59
	Cha's C. Hendricks	9	
	Hardwick & Co	9	51
	N. Hawkins & Co	7	97
	A. Borchert	2	18
	Mrs. M. A. Barston	21	25
	Amount carried forward		
57	Amount bro't forward		
	W. H. Banks, capt	20	54
	E. W. Solomons	11	
	Geo. P. Harrison, jun'r	10	62
	W. T. Goodwin	19	30

Mrs. M. A. Dillon	1	47
H. M. Davenport, A. D. M.	33	
Michael Henry	3	63
Geo. J. Kollock	68	48
John J. Kelly	1	26
F. W. Sims	34	45
Joseph Lippman	16	98
Alex. Mitchell	41	11
N. M. McIver	73	35
Phillips, Giles & Co	23,445	96
A. N. Mayer	7	63
A. Wilbur, ag't	2	29
F. D. Gare Neve	4	00
W. R. Phillips	15	12
D. G. Purse, tr	1	64
W. D. Wood	9	00
Henry Setenger	5	44
I. A. Stevenson, tr	4	98
I. Stevenson	1,000	
Capt. A. Scheoff	84	55
T. F. Stevens	19	78
Reid & Stewart	45	81
W'm Williams	93	75
D. M. S. Coles	10	
H. E. Snyder	3	
T. F. Stevens	4	09
Amount of deposites	246,458	50
58 Amount due Mechanics' Savings & Loan Association	251,205	78
Due banks:		
Mechanics' Bank, Augusta	100	02
Fulton, Atlanta	116	16
Virginia, Richmond	100	
Georgia Savings B'k, Macon	2,200	
Farmers & Mechanics', Savannah	14,807	24
Change bills	22,397	75
Certificates of deposit	19,880	98
Circulation 1,374,599 00		
Less redeemed 182,653		
	1,191,946	00
Due stockholders	532,832	48
	2,282,044	91

(Foregoing Exhibit A endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry complainant, and the Merchants and Planters' Bank and Hiram Roberts, defendants. In equity. Exhibit A to answer of Hiram Roberts. Filed Dec. 6, 1869. Ja's McPherson, clerk. Law, Lovell & Falligant.

59 *Replication.*

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY, COMPLAINANT,
vs.
MERCHANTS AND PLANTERS' BANK AND HIRAM Roberts, assignee. } In equity.

The replication of Harvey Terry, complain't.

This repliant, saving and reserving unto himself all and all manner of exception to the answer of said defendant, for replication thereunto saith: That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, traversed, or denied, is true.

All which matters and things this repliant is ready to prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath actually prayed.

A. W. STONE,
Sol'r for Comp't.

(Endorsed:) In the 5th C. C. of U. S. sout. dist. of Georgia. In equity. Harvey Terry *vs.* Merchants & Planters' Bank & Hiram Roberts, assignee. Replication. Filed Feb'y 7, 1870. Ja's McPherson, cl'k. Stone.

60 At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district on Friday, the 29th day of April, in the year of our Lord one thousand eight hundred and seventy.

Present, the honorable John Erskine, U. S. judge for the districts of Georgia, presiding.

HARVEY TERRY, COMPLAINANT,
vs.
MERCHANTS AND PLANTERS' BANK AND HIRAM Roberts, assignee, defendants. } In equity.

Order affirming report of commissioner and bill taken pro conf.

It appearing to the court that service of said bill was perfected on the defendants more than thirty days before December rules, 1869, and the defendant, the Merchants & Planters' Bank, having failed to plead, answer, or demur at the December rules of this court, an order was passed taking the said bill as confessed as to the said defendant, the Merchants and Planters' Bank.

That on the 18th day of January, 1870, this court, on the motion of A. W. Stone, solicitor for complainant, appointed Edward J. Harden a commissioner, to ascertain the amount due the complainant from the

said defendant, the Merchants and Planters' Bank, and to make report thereof at this term of this court.

And the said commissioner having made his report in terms of said order, that he finds due to the complainant by the defendant,
61 the Merchants and Planters' Bank, the sum of thirty-seven thousand seven hundred and twenty-nine on the bills or notes of said bank, which notes are now filed with the clerk of this court:

It is therefore ordered and decreed by the court that the report of said commissioner be, and is hereby, in all things confirmed, and that the bill be taken as confessed as against the said defendant, the Merchants and Planters' Bank, and that the said complainant have leave at this term to obtain and enter a final decree in said cause.

JOHN ERSKINE,
U. S. Judge.

APRIL 29, 1870.

(Endorsed:) In the fifth circuit court of the United States, southern district of Georgia. Harver Terry vs. The Merchants & Planters' Bank & Hiram Roberts, assignee. In equity. Order affirming report of commissioner and taken bill pro confesso. Filed April 29, 1870. Ja's McPherson, clerk. Stone.

Final decree against Merchants and Planters' Bank.

HARVEY TERRY, COMPLAINANT,
and
MERCHANTS & PLANTERS' BANK & HIRAM Roberts, assignee, defendants. } In equity.

62 This cause came on to be heard at this term, and the defendant, the Merchants & Planters' Bank, having failed to plead, answer, or demur to said bill of complaint, and an order having been granted taking the said bill as confessed against the said defendant, the Merchants and Planters' Bank:

Thereupon it is ordered, adjudged, and decreed, that the complainant do recover of the said defendant, the Merchants & Planters' Bank, the sum of thirty-seven thousand seven hundred and twenty-nine dollars, with interest thereon from the date of this decree, and the further sum of one hundred and thirty-two dollars and eighty-six cents for his costs; and that the clerk of this court do issue an execution against the said defendant, the Merchants & Planters' Bank, for the aforesaid sum of money, in accordance with this decree.

JOHN ERSKINE,
U. S. Judge.

APRIL 29TH, 1870.

(Endorsed:) In the fifth circuit court of the United States, southern dist. of Ga. Harvey Terry, complainant, and The Merchants & Planters' Bank & Hiram Roberts, assignee, def'ts. Final decree against Merchants & Planters' Bank. Filed April 29, 1870. Ja's McPherson, clerk. Stone. Final decree vs. Merchants & Planters' Bank, April 29, 1870.

63 *Order amending bill.*

HARVEY TERRY, COMPLAINANT,
vs.
MERCHANTS & PLANTERS' BANK & HIRAM ROBERTS, assignee. } In equity.

The complainant, Harvey Terry, moves the court to amend his bill in said cause, by inserting the words "thirty-eight thousand," in the seventeenth line on second page of said bill, in place of twenty-five thousand.

And it is so ordered by the court.

JOHN ERSKINE,
U. S. Judge.

APRIL 29, 1870.

(Endorsed:) In the fifth circuit of the U. States, southern district of Georgia. Harvey Terry vs. Merchants & Planters' Bank & Hiram Roberts, assignee. Order amending bill. Filed April 29, 1870. Ja's McPherson, clerk. Stone.

Fieri facias vs. *Merchants & Planters' Bank.*

UNITED STATES OF AMERICA,
Southern district of Georgia, fifth circuit court:

The President of the United States to the marshal of the districts of Georgia, greeting:

It is hereby commanded that, of the goods and chattels, lands and tenements, of the Merchants and Planters' Bank, you cause to be made the sum of thirty-seven thousand seven hundred and twenty-nine
64 dollars principal, with interest thereon from April twenty-ninth, eighteen hundred and seventy, which Harvey Terry lately, to wit, on the 29th day of April, A. D. 1870, in the fifth circuit court of the United States for the southern district of Georgia, recovered against it for his damages which he had sustained on occasion of the not performing certain promises and undertakings then lately made by the said Merchants & Planters' Bank to the said Harvey Terry, and also one hundred and thirty-two $\frac{86}{100}$ doll's, which in the said court were adjudged to the said Harvey Terry for his costs and charges by him about his suit in that behalf expended, whereof the said Merchants & Planters' Bank was convicted, as appears of record, and have you that money before the judges of said court, in the term of November next, to render to the said Harvey Terry, for his damages, costs, and charges aforesaid, together with this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixth day of June, in the year of our Lord one thousand eight hundred and seventy.

, *Pl'ff's Att'rn'y.*

JA'S MCPHERSON, *Clerk.*

(Endorsed:) No. 52. Fifth circuit court of the United States for the southern district of Georgia. To November term, 1870. Harvey Terry vs. The Merchants and Planters' Bank. Principal debt, $37,729.86. Interest from Ap'l 29, '70. Costs of suit, 132.86. Fi. fa. & s've decree, 1.55. Returned & filed, Jan'y 18, 1871. Ja's McPherson, clerk. Returned nulla bona Jan'y 18, 1871. A. W. Stone, pl'ff's' att'rn'y.

65 *Marshal's return of nulla bona on fi. fa.*

I have made diligent search and can find no goods or chattels, lands or tenements, of the within defendant in my district, whereof I can make the amount of the within execution or any part thereof.

W'M H. SMYTH,
U. S. Marshal.

Dated SAVANNAH, GA., *January* 18*th*, 1871.

66 UNITED STATES OF AMERICA,
Southern district of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms, in the city of Savannah, in and for the said district, on Saturday, the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the honorable William B. Woods, U. S. judge for fifth judicial circuit, and the honorable John Erskine, U. S. district judge, presiding.

HARVEY TERRY, COMPLAINANT,
and
THE MERCHANTS & PLANTERS' BANK ET AL.,
defendants.
} In equity.

Order to make publication as to filing claims.

It being represented that there are other persons than those before the court interested in the distribution of the assets involved in the said cause:

That the interests of all may be protected, so far as practicable—

It is ordered and decreed that all persons having demands against the Merchants & Planters' Bank shall, on or before the first Monday in April next, at rules, cause themselves to be made parties to said cause, with suitable and proper averments, asserting their respective claims.

And it is further ordered that the clerk of this court cause this order and decree to be published once a week for three months, before the next term of this court, in a newspaper published in the city of Macon, Ga., and New York, and that the expense of such publication be
67 paid out of the trust-funds in the hands of the receiver of said bank.

Granted in open court, December 16, 1871.

W. B. WOODS, *Judge.*

(Endorsed:) U. S. cir. court, so. dist. of Ga. In equity. Harvey Terry, compl't, and the Merchants and Planters' Bank, defend't. Order to make publication for all parties to file claims vs. defendant, &c. Filed Dec'r 16th, 1871. Ja's McPherson, clerk. Stone, sol'r for compl't. 2 copies for publication sent to Macon Telegraph & Messenger & New York Tribune, Dec. 22, 1871.

68 At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said

district, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable John Erskine, U. S. judge for the districts of Georgia, presiding.

HARVEY TERRY ET AL., COMPLAINANTS,
vs.
MERCHANTS & PLANTERS' BANK ET AL., defendants. } In equity.

Order appointing master in chancery.

On motion of solicitor for the complaint, it is ordered by the court that Andrew Sloan, esq., be, and is hereby, appointed master in chancery in the aforesaid cause, to examine into and take an account of and report to this court on the first day of the next term thereof the amount, character, and by whom presented, of all claims of any and all persons whomsoever, including attorneys, assignee, receiver, &c., against the funds assigned by said bank to Hiram Roberts, for the benefit of its creditors, in any manner arising out of or connected with the execution of said trust.

JOHN ERSKINE, *Judge.*

APRIL 29, 1872.

(Endorsed:) In the fifth circuit court of the United States for the southern dist. Ga., April term, 1872. Harvey Terry et al., compl't, vs. The Merchants & Planters' Bank et al., def'ts. Motion for the appointment of master. Filed April 30th, 1872. Ja's McPherson, clerk. Amherst W. Stone, sol.

69 *Instructions to master to count bills, &c.*

HARVEY TERRY ET AL., COMPLAINANTS,
vs.
MERCHANTS & PLANTERS' BANK ET AL., defendants. } In equity.

On motion of complainant, it is ordered that the master appointed in this case by the order of this court, of April 29th, 1872, in addition to the duties imposed on him by said order, that he be required to count the bank bills or notes that may be presented, where the same have not been counted by an officer of this court; and also if any payments have been made or should be allowed upon the said bills, or other claims, and what these credits are. And that the same be enclosed in a sealed package, properly marked and deposited in some safe and secure place, and what security any party or parties may have and rely on for further payment of the claims presented by them respectively other than the assets of said bank assigned, and report the same at the next term of this court. And further to report upon the priorities of such claims.

May 3d, 1872.

JOHN ERSKINE, *Judge.*

(Endorsed:) U. S. circuit court so. dist. of Georgia. In equity. Harvey Terry et al., compl'ts, and Merchants & Planters' Bank et al., def'ts. Order instructing master to count bills and deposit. Also to report on priorities of claims filed. Filed May 3d, 1872. Ja's McPherson, clerk.

70 At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on Wednesday, the thirteenth day of November, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable William B. Woods, U. S. judge for fifth judicial district, and the honorable John Erskine, U. S. judge for the districts of Georgia, presiding.

HARVEY TERRY, COMPL'T,
vs.
THE MERCHANTS & PLANTERS' BANK ET AL., def'ts. } In equity.

Order extending time for filing claims, &c.

An order having been passed at the last term of this court appointing Andrew Sloan master, &c., in the above-state' case, requiring said master to take an account of the bills, claims, and demands against the said bank, and report upon the same on the first day of this term, and it being represented that there are many parties who have not been able to file their claims, owing to the death of William Dougherty, esq., their attorney, it is ordered that all persons having claims or demands against said bank present the same to said master before the first day of next March, and that said master make his report on the first day of next term of this court.

In open court, Nov. 13, 1872.

W. B. WOODS, *Judge.*

(Endorsed:) U. S. cir. court so. dist. of Georgia. In equity. Harvey Terry, compl't, vs. The Merchants and Planters' Bank et al., def'ts. Order extending time for filing claims until March, 1873, and for master to report the next term. Filed Nov. 13, 1872. Ja's McPherson. A. W. Stone & A. T. Akerman, sol' for compl't.

71 *Order to take testimony.*

HARVEY TERRY, COMPL'T,
and
THE MERCHANTS & PLANTERS' BANK ET AL., defendants. } Motion to transfer bank-bills, filed by J. & T. Green, to Harvey Terry.

It is ordered that the parties to the above motion have leave to take testimony as to the facts recited in said motion, and as to the value of the services claimed to have been performed by Messrs. Law, Lovell & Falligant, as attorneys of said J. & T. Green. Granted in open court, Dec. 17, 1872.

JOHN ERSKINE, *Judge.*

(Endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry, comp't, and the Merchants and Planters' Bank et als., defendants. Motion to transfer the bank-bills filed by J. and T. Greene to Harvey Terry. Order to take testimony. Filed Dec. 7, 1872. Ja's McPherson, clerk. Law, Lovell & Falligant.

72 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America, for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on Monday, the nineteenth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable William B. Woods, U. S. judge for fifth judicial circuit, and the honorable John Erskine, U. S. district judge presiding.

HARVEY TERRY, COMPLAINANT,
vs.
THE MERCHANTS & PLANTERS' BANK, AND HIRAM ROBERTS, defendants. } In equity.

Order instructing master to take testimony as to certain claims, &c.

The testimony not having been closed before the master in this case, and the report not having been filed within the time limited by the order heretofore taken, now, on motion of D. T. Corbin, solicitor of Harvey Terry, it is ordered that the master do take testimony and report—

1. Whether any of the parties who have come in, filed their claims and asked to be made parties plaintiffs in this cause, have brought suit at law or in equity, either or both, against the Merchants and Planters' Bank, or against any or all of the stockholders of said bank, or against any or all of the officers of said bank, any one or more or all of said parties, as defendant or defendants, upon the same or any other cause of action since the 18th day of July, A. D. 1866, and to what result have said suit or suits been carried.

73 2. Whether (if such suit or suits have been brought) any sum or sums of money, if so, how much, and from whom, have been collected or recovered upon any of said causes of said action or otherwise.

3. Ordered further, that the time heretofore limited within which to take testimony and report to the master be extended to the 1st day of August, 1873.

W. B. WOODS, *Judge.*

(Endorsed:) U. S. circuit court so. dist. of Georgia. In equity. Harvey Terry, comp't, vs. The Merchants and Planters' Bank et al., defendants. Order on complainant's motion instructing the master to take testimony as to parties who have filed claims, &c., their other suits, collections, &c., and to enlarge time for master to report. Filed May 19, 1873. Ja's McPherson, clerk. D. T. Corbin, sol'r for comp't. Motion filed May 10, 1873.

74 *Master's report of the examination before him on motion of Harvey Terry.*

SAVANNAH, GA., *June 28th*, 1873.

Master resumed his sittings on this day at his office, corner of Drayton & Bryan streets, Savannah, Georgia.

HARVEY TERRY, COMPL'T,
and
MERCHANTS & PLANTERS' BANK ET AL. } In equity.

Testimony of Robert McIntire

ROBERT MCINTIRE, who resides in Sav'h, Ga., sworn at the instance of Harvey Terry in said cause. Examined by H. Terry in person.

1st question. Please state your name, age, and residence.

Ans. My name is Robert McIntire. My residence, Savannah, Ga. My age about 56 years.

2 ques. Of what firm are you?

Ans. Of the firm of W. & R. McIntire.

3 ques. Was the firm of W. & R. McIntire stockholders in the Merchants & Planters' Bank named in this case, and are you in attendance here in obedience to a subpœna issued to your brother?

Ans. Yes.

4th ques. What number of shares did the firm of W. & R. McIntire hold in the Merchants & Planters' Bank?

(Witness objects to the question for the reason he cannot state exactly. Objection overruled by master.)

Ans. I think W. & R. McIntire had about 400 shares, and I had something over 100 besides, may-be 20 or 25; can't state definitely.

75 5 ques. What part of the subscription to the capital stock held by your firm and yourself was paid in?

(Objection by witness to the question as illegal. Master sustains the objection, the question not being within either the letter or spirit of the instructions given to the master by court, & as irrelevant to the issues referred. Harvey Terry excepts to master's ruling.)

6 ques. Has the firm of W. & R. McIntire or yourself paid any moneys to any parties, and if so, to whom, and what amounts paid and in what kinds of money; whether in currency or in the notes of said bank, and what amount of each, on account of your indebtedness to said bank?

Ans. I paid to A. W. Stone and William Dougherty on said liability the sum of six thousand dollars. I gave it to Mr. Stone in check. I think I at the same time gave them two notes of one thousand dollars each, at one and two years, without interest, which notes have been paid. I also paid them ($1,879) eleven thousand eight hundred and seventy-nine dollars in the notes or bills of said bank.

7th ques. Have you a receipt for the same? If so, produce it.

Ans. I have, but have it not with me, but can produce it, and am willing to do so.

Examination adjourned till Monday to give time for the production of the receipt.

ROB'T MCINTIRE.

Sworn to & subscribed before me, June 28, 1873.

ANDREW SLOAN, *Master.*

76 JUNE 28, 1873.

Robert McIntire having appeared again with the receipt referred to in his previous examination, his examination was resumed by Mr. H. Terry.

1st question. Look at the paper now presented to you and marked Exhibit "A," and state whether it is a true copy of the receipt referred to you on your previous examination.

Ans. It is a true copy; I have the original before the master, and have compared the copy with it.

2 ques. What amount of indebtedness did the payment made by you to Stone & Dougherty cancel?

(Question overruled as illegal, and not within the duties of the master in this case; the effect and force of the receipt being a question determined by law Harvey Terry, esq., excepts to the master's ruling.)

3 ques. What amount did you owe the bank?

(Question overruled upon objection of witness. Ruling excepted to by H. Terry, esq.)

4th question. Was your whole indebtedness, both of your firm and yourself, discharged by this payment?

(Question overruled by master, of his own motion, as not pertinent or legal in the case referred to him.)

Ans. I understand it to be a settlement in full of our debts and liabilities on account of stock owned and held by us in the Merchants and Planters' Bank.

Question by master:

1 question. Are the above suits contained in Exhibit A the only ones brought against you on account of your liability to the Merchants and Planters' Bank?

Ans. They are.

77 ROB'T McINTIRE.

Sworn to & subscribed before me June 28th, 1873.

ANDREW SLOAN, *Master, &c.*

EXHIBIT A.

Levi H. B. Scott vs. William & Robert McIntire.
George W. Hatch vs. William & Robert McIntire.
Frisbee & Roberts vs. William & Robert McIntire.
W. N. Marsh vs. William & Robert McIntire.
Scott, Zerega & Co. vs. William & Robert McIntire.

Actions of debt and bill in equity in the fifth circuit court of the United States, southern dist. of Georgia, on statutory liability of the defendants as stockholders in the Merchants & Planters' Bank.

Received of the defendants, William & Robert McIntire, six thousand dollars in money and eleven thousand eight hundred and seventy-nine dollars in the bills of said bank and their promissory notes for two thousand dollars, due in one and two years after date. In consideration thereof, and the payment by the defendants of the costs of suit in said cases, we agree, whenever requested by the said defendants, or either of them, to dismiss all suits at law or in equity pending against them or either
78 of them, growing out of their relation to the Merchants and Planters' Bank as stockholders therein, and their liability to billholders on account of stock by them paid in and their unpaid stock in said bank.

And in consideration of said sum of money we hereby release to the said William & Robert McIntire from all and every liability to any party or parties we represent, who are billholders in said bank; and we agree not to take or prosecute any other suit or suits against them, or either of them, as such stockholders in said Merchants & Planters'

Bank, without prejudice to the rights of any of our clients in cases against other stockholders of the said Merchants and Planters' Bank.

March 30, 1871.

W. DOUGHERTY,
For those Clients represented by him.
A. W STONE,
For those Clients represented by him.

[5 ct. stamp]

Testimony of John W. Nevitt.

JOHN W. NEVITT, being sworn, says, being examined:

1 ques. Please state your name, age, and residence.

Ans. My name is John W. Nevitt, my age 58, my residence Sav'h, Ga.

2 ques. Were you a stockholder in the Merchants & Bank?

Ans. I was. I subscribed for 50 shares, and paid 50 % at time of subscription.

79 • 3 question. Have you made any payments to any parties, and if so, to whom, upon your indebtedness due on account of your unpaid stock or other liability?

Ans. I paid to Mr. Stone and Mr. Dougherty twenty-five hundred dollars, that being the other 50 % of my stock subscribed. I made no other payments individually. Nevitt, Lathrop & Rogers, of which firm I was a member, had 20 shares stock in said bank, upon which 50 % had been paid. I do not remember whether 50 % on this stock of Nevitt, Lathrop & Rogers was paid at time of subscription or not. I, upon this liability, paid to Messrs. Stone & Dougherty 50 % or $1,000 in settlement upon the stock subscribed by the said firm.

4th question. Have you a receipt or receipts for these payments? If so, produce them before the master.

Ans. I have, and herewith produce them before the master.

5 question. Please look at the paper now presented to you by the master, marked Exhibit A, & state whether it is a true copy of the original receipt given you by Messrs. Stone and Dougherty, in settlement with them of your said liability on account of unpaid stock.

Ans. I have looked at the paper, and it is a true copy thereof.

6th question. In what suit or cause did you pay this money?

Ans. I paid it on account of the suits in the U. S. circuit court for the southern district of Georgia against me, in favor of Frisbee & Roberts vs. John W. Nevitt; W. N. Marsh vs. same; Geo. W. Hatch vs. same; L. H. B. Scott vs. same; F. Zerega et al. vs. same, and W. N. Marsh et al., compl'ts, and John W. Nevitt, def't.

80 Question by the master:

1. Have you been sued by any other parties than those named above on account of your said liability, and was the payment made by you a payment upon your stock or upon personal liability?

Ans. There were no other suits against me than those mentioned; and the payments were made upon them as a whole, to the full extent of my unpaid stock.

JOHN W. NEVITT.

Sworn to & subscribed before me June 28, 1873.
ANDREW SLOAN, *Master.*

EXHIBIT A.

SAVANNAH, *May* 31, 1871.

In consideration of the sum of twenty-five hundred dollars to us in hand paid by John W. Nevitt, a stockholder of the Merchants & Planters' Bank, (it being fifty dollars on each share so held by said Nevitt,) and all costs which have accrued on the suits against him up to this date, we, the undersigned, attorneys for certain creditors of said Merchants & Planters' Bank, do hereby agree and bind ourselves and all those we represent to its performance; that no other or further action or proceeding whatsoever, either in equity or at law, shall be had or taken against the said John W. Nevitt as such stockholder of said bank, until an amount equal to that so paid by said Nevitt shall be received from each stockholder of said bank pro rata to the number of shares so held by such stockholder, to wit, fifty dollars per share.

In testimony whereof we have hereto set our hands and seals the day and year above written.

W. DOUGHERTY. SEAL.]
A. W. STONE. [SEAL.]

[5 ct. stamp.]

Presented June 28th, & verified by master as a true copy.
ANDREW SLOAN, *Master.*

81 *Testimony of George B. Cumming.*

GEORGE B. CUMMING, being sworn on the part and at the instance of H. Terry, esq., who appears in person, and W. Grayson Mann, esq., appearing as counsel for Mr. Cumming, in answer to the questions of Mr. Terry, says:

Ques. 1. Please state your name, age, and residence.

Ans. My name is Geo. B. Cumming; my age about 78; residence, Savannah, Georgia.

Ques. 2. Are you or not a stockholder in the Merchants and Planters' Bank?

Ans. I was.

3 ques. Did you make any payments to any parties on account of your indebtedness to the Merchants & Planters' Bank? If so, to whom were said payments made, what amount paid, and in what kind of currency or money paid?

Ans. I made a payment to Messrs. Dougherty & Stone, representing certain creditors of that bank, of the sum of twenty-five thousand dollars, in the currency of the United States.

Ques. 4. Have you a receipt given you by Messrs. Stone & Dougherty at that time for these payments?

Ans. I have a receipt for the sum of said $25,000.

Ques. 5. Was that money paid upon suit, & upon whose suit paid?

Ans. It was paid upon compromise of the suits in the U. S. circuit court against me, in favor of W. N. Marsh vs. Geo. B. Cumming, F. Zerega et al. vs. same, Geo. W. Hatch vs. same, Frisbee & Roberts vs. same, W. N. Marsh et al., compl'ts, vs. same, and in settlement of
82 all other claims represented by Messrs. Dougherty and Stone, as will appear by copy receipt hereto attached, and marked Exhibit A, given at date of payment.

Cross-examination waived by W. Grayson Mann, att'y for Geo. B. Cumming.

GEORGE B. CUMMING.

Sworn to & subscribed before me, June 28, 1873.
ANDREW SLOAN, *Master, &c.*

EXHIBIT A.

SAVANNAH, 30*th May*, 1871.

In consideration of the sum of twenty-five thousand dollars to us in hand paid by George B. Cumming, a stockholder in the Merchants & Planters' Bank, (it being fifty dollars on each share of stock so held by said Cumming,) and all costs which have accrued on the suits against him up to this date, we, the undersigned, attorneys for certain creditors of said Merchants & Planters' Bank, do hereby agree and bind ourselves, and all those we represent, to its performance; that no other or further action or proceedings whatever, either in equity or at law, shall be had or taken against the said George B. Cumming, as such stockholder of said bank, until an amount equal to that so paid by the said Cumming shall be received from each stockholder of said bank pro rata the number of shares so held by such stockholders, to wit, fifty dollars per share.

In testimony whereof we have hereto set our hands & seals the day and year above written.

W'M DOUGHERTY. [SEAL.]
A. W. STONE. [SEAL.]

[5-c't stamp.]

83 *Testimony of W. W. Lincoln.*

W. W. LINCOLN, being sworn at the instance of H. Terry, esq., upon being interrogated by H. Terry, answers:

1 question. Please state your name, age, and residence.

Ans. My name is W. W. Lincoln. My age, 59. My residence, Savannah, Ga. I was a stockholder in the Merchants & Planters' Bank, and had 25 shares of stock.

2 ques. Did you make any payments to any person; and, if so, to whom, and upon whose account, for any indebtedness due by you to the Merchants & Planters' Bank?

Ans. I, as stockholder of said bank, did pay to A. W. Stone & W. Dougherty the sum of twelve hundred and fifty dollars, being fifty dollars per share on the stock held by me. I paid this on account of the suits of Geo. W. Hatch and Levi H. B. Scott, pending in the U. S. circuit court for the southern dist. of Georgia, and in compromise of all suits or claims represented by said Stone & Dougherty, as will appear by reference to the receipt given by them, which is now before the master, and which is similar in form and terms as that given by Mr. John W. Nevitt, a copy of which is attached to his deposition, and marked Exhibit A, with exception of amounts & parties.

Master asks the following question:

1. Have you been sued by any other parties than those mentioned above, and have you made any other payments, either upon suit or compromise?

Ans. I have not.

84 W. W. LINCOLN.

Sworn to & subscribed before me, June 28, 1873.

ANDREW SLOAN, *Master, &c.*

Testimony of J. V. Connerat.

Mr. J. V. CONNERAT being sworn, at the instance of Harvey Terry, esq., in answer to the questions of H. Terry, answering, says:

1 question. What is your name, your age, and residence?

Ans. My name is J. V. Connerat. My age, 61 years; and my residence, Savannah, Georgia.

2 question. Were you a stockholder in the Merchants and Planters' Bank?

Ans. I was, and held 50 shares of the stock.

3 question. Did you make any payment on account of your indebtedness to the Merchants and Planters' Bank? If so, to whom, what amount, and in what kind of currency?

Ans. I paid eleven hundred and twenty-five dollars to W'm Dougherty. I paid one thousand cash, for which I took receipt signed by Dougherty & Stone, and afterwards, on the 15th day of April, 1872, I paid the said Dougherty one hundred and twenty-five dollars, for which I have no receipt, making, in the aggregate, the $1,125, as above stated. In addition to this, I gave Mr. Dougherty five thousand dollars of the bills of the Merchants & Planters' Bank, for which I took no receipt.

85 4th question. Have you a receipt for the moneys paid? If so, produce it before the master.

Ans. I have a receipt for the thousand dollars paid, but have none for the additional $125, nor for the $5,000 Merchants & Planters' Bank bills turned over to him. I produce before the master the original receipt given me for the $1,000, a copy of which is attached hereto, and marked Exhibit A.

5 question. Of what amount of indebtedness did you expect this payment to clear you?

(Question overruled upon motion of master himself, as not being within the line of his duties, he not being called upon to investigate the amount of stock held by each man or stockholder, or upon how much stock each paid, and the bill in this case not being against this party, or asking any discovery upon that point, the master's duty under the order of reference being simply to ascertain how much money the witness has paid upon his liability to bank & bill-holders.

Harvey Terry excepts to the ruling of the master.)

Ans. I expected the amount paid to clear me altogether.

6th. What was the amount of the judgment against you?

Ans. Four thousand dollars.

Questions, (by the master:) Was the suit of which you speak in the U. S. court here, and are there any other suits against you upon the same liability, and in whose favor are the suits against you?

86 Ans. I think the suit was in the U. S. court, but I don't know in whose favor the suits were. The only suits against me were those of which I have spoken.

J. V. CONNERAT.

Sworn to & subscribed before me, this 28th day of June, 1873.

ANDREW SLOAN, *Master, &c.*

EXHIBIT A.

SAVANNAH, *July 4th*, 1871.

In consideration of the sum of one thousand dollars, in cash paid, on this day, by Joseph V. Connerat, a stockholder in the Merchants & Planters' Bank, and an agreement on the part of the said Joseph B. Connerat, to pay the sum of one hundred and twenty-five dollars, on the first of April next, and the further sum of eleven hundred and twenty-five dollars twelve months from the date of this instrument, with interest for the same from date, and all costs which have accrued on the

suits against him up to this date, we, the undersigned attorneys for certain creditors of said Merchants & Planters' Bank, do hereby agree and bind ourselves, and all those we represent, to its performances; that no other or further action or proceedings whatsoever, either in equity or at law, shall be had or taken against the said Connerat as such stockholder of said bank until an amount equal to that so paid by the said Connerat shall be received from each stockholder of said bank pro rata the number of shares so held by such stockholders, to wit, fifty dollars per share.

In testimony whereof we hereto set our hands & seals the day and year above written.

W. DOUGHERTY. [SEAL.]
A. W. STONE. [SEAL.]

[5-cent stamp.]

87 *Testimony of George Cornwell.*

JUNE 30TH, 1873.

GEORGE CORNWELL, being sworn and examined at the instance of Harvey Terry, esq., in answer to the questions propounded by said Terry, says to—

1. Question. Please state your name, your age, and your residence.

Ans. My name is Geo. Cornwell; my age, 50; my residence is Sav'h, Georgia.

2. Question. Were you a stockholder in the Merchants & Planters' Bank?

Ans. I was. I had 10 shares.

3. Ques. Did you at any time make any payment to any parties on account of unpaid stock or on account of any liability you may have been under to said bank? If so, to whom was the payment made, and what was the amount of said payment?

(Witness declines to answer the question.

Master rules that the question is legal and pertinent under the issues referred to him.)

Ans. I paid five hundred dollars to Messrs. Dougherty & Stone. I turned over one thousand dollars in the bills of the bank for collection, but these bills were not in payment of any liability.

4. Question. Was the five hundred dollars paid by you in full payment of all your indebtedness to the bank?

(Question overruled as not pertinent to the issues referred to the master.)

5. Question. Have you the receipt given you by Messrs. Dough-
88 erty & Stone, in making your settlement with them? If so, please produce it before the master.

Ans. I have it now before the master for his inspection.

6. Question. Did you pay this upon suit; and, if so, upon what suits?

Ans. I paid it upon the suits of Geo. W. Hatch and L. H. B. Scott, in the U. S. circuit court against me, and upon the claims of all other parties represented by Messrs. Stone & Dougherty.

GEORGE CORNWELL.

Sworn to & subscribed before me June 30th, 1873.

ANDREW SLOAN, *Master, &c.*

Testimony of Noah B. Knapp.

SAV'H, GA., 30 *June*, 1873.

NOAH B. KNAPP, being sworn at the instance of H. Terry, esq., in answer to the questions of said Terry, says:

1. Quest. Please state you name, your age, & residence.

Ans. N. B. Knapp; my residence, Savannah, Ga.; my age is 67 years.

2. Ques. Were you a stockholder in the Merchants & Planters' Bank of Savannah, Ga.?

Ans. I was. I had 100 shares.

3. Ques. Did you at any time pay any money to any parties; if so, to whom, and how much upon account of your liability to the Merchants & Planters' Bank?

89 Ans. I did. I paid the sum of five thousand dollars to W. Dougherty and A. W. Stone; the money being paid directly to A. W. Stone in person.

4. Ques. Was this money paid upon suit; if so, at whose suit was it so paid?

Ans. I can't state definitely upon whose suit; all I know is what the cost-bills paid me state. I find upon examination of the cost-bills which I now have, that the suits were as follows, viz: W. N. Marsh et al., compl't, vs. Noah B. Knapp, def't; Geo. W. Hatch vs. Noah B. Knapp; Frisbee & Roberts vs. Noah B. Knapp; L. H. B. Scott vs. Noah B. Knapp; Geo. W. Hatch vs. Same; W. N. Marsh vs. Same; F. Zerega et al. vs. Same.

5. Question. What amount of indebtedness to the bank did this liquidate?

(Question overruled by the master as not pertinent to the issues, and the case referred to him.

H. Terry excepts to the ruling of the master.)

6th question. Was the whole of your indebtedness to the bank liquidated by that payment?

(Question overruled as not pertinent to the issues referred to the master, and not at all within the line of his duties in this case.

Harvey Terry excepts to the ruling of the master.)

Question by the master:

1. Are there or were there any other suits at law or in equity against you on account of your said liability than those you have mentioned above?

Ans. None others for any liability on account of that bank.

2. Question. Have you any receipt or agreement made with
90 Stone & Dougherty at the time you paid said money to them? If so, will you be kind enough to attach a copy of the same to your answers?

Ans. I have an agreement made at the time, and Exhibit A, hereto attached, is a true copy of the same.

N. B. KNAPP.

Sworn to & subscribed before me June 30, 1873.

ANDREW SLOAN, *Master, &c.*

Exhibit A.

SAVANNAH, *May* 30, 1871.

In consideration of the sum of five thousand dollars, to us in hand paid by the said Noah B. Knapp, a stockholder in the Merchants and Planters' Bank, (it being fifty dollars on each share so held by said Knapp,) and all costs which have accrued in the suits against him up to this date, we, the undersigned, attorneys for certain creditors of said Merchants & Planters' Bank, do hereby agree and bind ourselves and all those we represent to its performance; that no other or further action or pro-

ceedings whatever, either in equity or at law, shall be had or taken against the said Noah B. Knapp as such stockholder of said bank, until an amount equal to that so paid by the said Knapp shall be received from each stockholder of said bank pro rata, the number of shares so held by such stockholders, to wit, fifty dollars per share.

In testimony whereof we have hereto set our hands and seals the day and year above written.

W. DOUGHERTY. [SEAL.]
A. W. STONE. [SEAL.]

[5 ct. stamp.]

91 *Testimony of Isaac M. Marsh.*

JUNE 30, 1873.

I. M. MARSH, being sworn at the instance of H. Terry, in answer to the questions propounded to him, says:

1st question. Please state your name, your age, and your residence.

Ans. My name is Isaac M. Marsh; my age, 43 years; and my residence Savannah, Georgia.

2. Question. Did you at any time, as agent or attorney for Ephraim Scudder, pay any money to any one on account of his liability to the Merchants and Planters' Bank; if so, to whom, and what amount did you pay?

Ans. I paid to Col. A. W. Stone, as the attorney of Mr. Scudder, the sum of one thousand dollars, and some fifty dollars, the costs and charges in the U. S. circuit court of the suit against Mr. Scudder. I do not remember the style of the suit against Mr. Scudder, but the records in the U. S. circuit court will show.

3. Ques. Did this payment liquidate all the indebtedness of Mr. Scudder to said bank?

(Question overruled by the master as not pertinent to the issues referred to him, and as not legal.

Excepted to by Mr. H. Terry.)

ISAAC M. MARSH.

Sworn to & subscribed before me this the 30th day of June, A. D. 1873.

ANDREW SLOAN, *Master, &c.*

92 *Testimony of Edward Lovell.*

JUNE 30TH, 1873.

Master resumed his sittings, and EDWARD LOVELL, esq., appeared as a witness at the instance of H. Terry, esq., and being examined by said Terry in person, answering, says:

1st question. Please state your name, your age, and residence.

Ans. My name is Edward Lovell; my age, 57; residence, Sav'h, Ga.

2. Ques. Were you a stockholder in the Merchants & Planters' Bank?

Ans. I was. I had 71 shares.

3. Ques. What amounts of money if any have you paid, to whom, and in what kind of money on account of your indebtedness to the Merchants & Planters' Bank?

Ans. I paid thirty-five hundred and fifty dollars to Mr. A. W. Stone in a check. I paid nothing else save the costs.

4. Ques. Upon what suits if any was this paid?

Ans. I paid the money on account of the suits pending in the U. S. circuit court for the southern district of Georgia, in favor of Frisbee & Roberts vs. Edward Lovell, George W. Hatch vs. same; F. Zerega et al. vs. same; W. N. Marsh vs. same; W. N. Marsh et al., compl't, and E. Lovell, def't; George W. Hatch vs. same, and on account of all claims represented by Messrs. Stone and Dougherty.

5. Ques. What amount of indebtedness were you discharged by this payment?

(Question overruled by the master of his own motion, it not being pertinent to any of the issues referred to master in this cause.

H. Terry excepts to the ruling of the master upon the grounds
93 that the question is pertinent to show the amount of indebtedness discharged to said Lovell, and the amount of credit that should be given to said Lovell by Stone & Dougherty for such payment.)

6. Question. Was your full indebtedness to said bank discharged by that payment?

(Question overruled.)

Ans. I so considered it.

Question by the master:

1. Are there any other suits or claims against you on account of the liability to the bank and bill-holders, save those mentioned above?

Ans. None that I know of.

E. LOVELL.

Sworn to and subscribed before me June, 30, 1873.

ANDREW SLOAN, *Master, &c.*

Testimony of George S. Nichols.

GEORGE S. NICHOLLS, being sworn at the instance of Harvey Terry, esq., in answer to the questions of said Terry, says to—

1st question. Please state your name, your age, and residence.

Ans. My name is George S. Nicholls; my age, 64; my residence, Savannah, Georgia.

2. Question. Were you a stockholder in the Merchants & Planters' Bank?

Ans. I was. I had 40 shares and 50% paid at subscription.

94 3. Question. Did you make any payment at any time on account of your indebtedness to the bank; if so, to whom, and in what kind of money?

Ans. I did. I paid only to Stone & Dougherty. I paid two thousand dollars in check on Central Railroad & B'king Co. I made no other payment except costs of court upon suits against me.

4th question. Upon what suits did you make these payments?

Ans. I have statement of them, as follows: W. N. Marsh et al., compl'ts, and George S. Nichols, def't; F. Zerega et al. vs. same; George W. Hatch vs. same; Frisbee & Roberts vs. same; L. H. B. Scott vs. same; W. N. Marsh vs. same.

5th question. What was the amount of your indebtedness to the bank?

(Question overruled. H. Terry excepts to the ruling.)

6. Question. What amount of indebtedness did you liquidate by making said payment?

(Question overruled as not pertinent to the issues before the master; not within the line of his duty; and because the receipt or agreement between witness and Stone & Dougherty is the best evidence of what

was done, and the proper construction thereof is a matter for the court and not for the witness.

Exceptions to master's ruling made by Harvey Terry, esq.)

6. Question. Was your full indebtedness to the Merchants & Planters' Bank discharged by this payment?

(Question overruled as not pertinent, and that being a matter for the court to determine in giving effect to the agreement made with
95, 96 Stone & Dougherty. Ruling of master excepted to by Harvey Terry, esq.)

Ans. I suppose so; that was my understanding.

Question by master:

1. Were there any other actions or suits against you, save those above mentioned, on account of your liability to the bank?

Ans. None that I am aware of.

GEO. S. NICHOLS.

Sworn to & subscribed before me the 30 day of June, A. D. 1873.
ANDREW SLOAN, *Master, &c.*

Testimony of Andrew M. Ross, adm'r.

SAV'H, GA., 1*st July*, 1873.

ANDREW M. ROSS, administrator of the estate Isaac W. Morrell, being sworn at the instance of Harvey Terry, esq., in answer to the question of Harvey Terry, esq., answers:

1. Question. Please state your name, your age, and residence.

Ans. My name is Andrew Miller Ross; my age, 62 or 63 year'; my residence, Savannah, Ga.

2. Ques. Are you the legal representative of Isaac Moreill, dec.?

Ans. I was, but have been discharged.

3. Question. Did you, as such legal representative, pay or settle any indebtedness of said Morrell to the Merchants and Planters' Bank; if so, what was it?

Ans. I settled a judgment and execution in favor of W'm N. Marsh et al. vs. Andrew M. Ross, administrator of Isaac W. Morrell, dec'd, for nine thousand, principal debt, and have copy of execution returned satisfied.

97 4th. Was this judgment for a debt due the Merchants and Planters' Bank?

Ans. It was.

Question by the master:

1. Question. What amount of money did you, or your attorney or agent, pay in settlement of this claim against Morrell?

Ans. I don't know the amount, but from a letter from my attorney, Geo. A. Mercer, I see that A. W. Stone received the sum of five thousand dollars, out of which Mr. Stone paid me one hundred and twenty-five dollars, one-half of my commissions, and he was to pay me the other one hundred and twenty-five dollars if Edwin Parsons agreed to the same, which last amount has never been received.

AND. M. ROSS.

Sworn to & subscribed before me July 1, 1873.
ANDREW SLOAN, *Master, &c.*

Testimony of C. D. C. Rhind.

SAVANNAH, GA., *July* 1, 1873.

C. D. C. RHIND, being sworn at the instance of Harvey Terry, in answer to the questions propounded by said Terry, says:

1st question. Please state your name, your age, and your residence.

Ans. My name, C. D. C. Rhind; age, 50 years; and residence, Savannah, Ga.

2. Question. Please state whether you are the legal representative of the late John J. Kelly, deceased.

Ans. I am the sole legal representative of the said Kelly.

3. Question. State whether, as such legal representative, you have liquidated any indebtedness to the Merchants & Planters' Bank?

Ans. I have not.

98 4th question. Have any evidence that any such indebtedness has been liquidated?

Ans. I have a receipt from W. Dougherty for twelve hundred and fifty dollars for himself and A. W. Stone, for all creditors represented by them, a copy of which is hereto attached, marked Exhibit A.

5. What amount of indebtedness did this payment liquidate?

(Question overruled by the master as not pertinent & legal. Ruling excepted to, and witness answers:)

This payment liquidated a claim of six thousand.

6. Question. Upon what suit or suits was this payment made?

Ans. I do not know.

C. D. C. RHIND.

Sworn to & subscribed before me July 1, 1873.

ANDREW SLOAN, *Master.*

Exhibit A.

SAVANNAH, *July* 15, 1871.

Received of John Kelly, a stockholder of the Merchants and Planters' Bank, twelve hundred and fifty dollars on the several claims or demands against said bank held, owned, and controlled, or represented by Col. A. W. Stone or myself. And I further agree and bind myself that no further payment shall be required, nor any proceedings instituted against said Kelly on any claim or demand so represented or held by said Stone or myself until the same amount is received pro rata, the stock

99 held by him of every other stockholder in said bank, the said Kelly paying costs to date.

In testimony whereof I have hereunto set my hand and seal the day and date above written.

W. DOUGHERTY, [SEAL.]

Att'y for certain creditors Merchants & Planters' Bank.

(In pencil:) Per a/c John J. Kelly, H. Brigham.

Testimony of Thomas F. Screven.

SAVANNAH, GA., *July* 2, 1873.

Mr. THOMAS F. SCREVEN, being sworn and examined at the instance of Harvey Terry, esq., in answer to the questions of Harvey Terry, esq., says:

1. Question. Please state your name, your age, and your residence.

Ans. My name is Thomas F. Screven; age, 39 years; residence, Sav'h, Ga.

2. Question. Are you a stockholder in the Merchants and Planters' Bank?

Ans. I am. I had 150 shares stock.

3. Ques. Did you make any payment to any person; if so, to what amount and to whom, on account of your indebtedness to the Merchants & Planters' Bank, and in what kind of money did you make said payment?

Ans. I paid eight thousand three hundred and fifty dollars ($8,350) to Messrs. Dougherty & Stone, in U. S. currency.

100 4. Question. Was this money paid upon suits; and, if so, upon what suits?

Ans. Yes; upon suits of F. Zerega et al. vs. myself; Frisbee & Roberts vs. same; W. N. Marsh vs. same; George W. Hatch vs. same; W. N. Marsh et al., compl'ts, vs. same, in the U. S. circuit court for the southern district of Georgia.

5. Ques. What amount of indebtedness did that payment liquidate?

(Question overruled as not pertinent to the issues referred to the master. H. Terry, esq., excepts to the ruling of the master.)

6. Ques. Did such payment liquidate your whole indebtedness to the bank?

(Question overruled by the master as neither legal or pertinent to the issues referred to him. Ruling excepted to by H. Terry, esq.)

Witness, however, answers: I presume it did.

Question by the master:

Were there, and are there, any other suits against you, on account of your said liability, than those mentioned above?

Ans. I know of none others.

2. Question. Have you an obligation or receipt, given you by Messrs. Stone & Dougherty at the time you made payment, and will you please attach copy same to my answers, which is marked Exhibit A?

Re-examined by H. Terry, esq.:

1. Was such payment made upon statutory personal liability or for unpaid stock?

101 (Question overruled as not pertinent. Ruling excepted to by H. Terry, esq.)

Ans. As I understood it, it was in satisfaction of both liabilities.

2. Do you know of any other payments made by any other person?

Ans. I know of one other; that made by my brother, John Screven.

3. What amount did he pay?

Ans. About the same as mine; can't state definitely.

4. Question. Was it paid upon suits; and, if so, what suits?

Ans. I presume it was paid upon suits similar to my own.

T. F. SCREVEN.

Sworn to & subscribed before me July 2, 1873.

ANDREW SLOAN, *Master, &c.*

Exhibit A.

SAVANNAH, *May* 30, 1871.

In consideration of the sum of eighty-three hundred and fifty dollars, to us in hand paid by Thomas F. Screven, a stockholder in the Mer-

chants and Planters' Bank, (it being fifty dollars on each share so held by said Screven,) and all costs which have accrued on the suits against him up to this date, we, the undersigned attorneys for certain creditors of said Merchants & Planters' Bank, do hereby agree and bind ourselves, and all those we represent to its performance, that no other or further action or proceedings whatever, either in equity or at law, shall be had or taken against the said Thomas F. Screven as such stockholder of said bank, until an amount equal to that so paid by
102 said Screven shall be received from each stockholder of said bank pro rata the number of shares so held by such stockholder, to wit, fifty dollars per share.

In testimony whereof we hereunto set our hands and seals the day and year above written.

W. DOUGHERTY. [SEAL.]
A. W. STONE. [SEAL.]

[5-ct. int. rev. stamp.]

Testimony of William M. Rogers.

SAVANNAH, GA., *July* 2, 1873.

WM. M. ROGERS, being sworn and examined at the instance of H. Terry, esq., in answer to the questions propounded by H. Terry, says:

1. Question. Please state your name, your age, and your residence.

Ans. My name is W'm M. Rogers; my residence, Sav'h, Ga.; and my age, about 64.

2. Question. Were you a stockhold' in the Merchants & Planters' Bank?

Ans. I was a stockholder; had 100 shares.

3. Ques. Mr. Rogers, please state whether you paid any money on account of your indebtedness to the Merchants and Planters' Bank; if so, to whom, what amount, and in what kind of currency or money.

Ans. I paid Messrs. Dougherty & Stone two thousand five hundred cash, and seven thousand dollars in the bank-bills of the Merchants & Planters' Bank.

4. Was this indebtedness paid on account of suits?

103 Ans. It was paid in compromise of suits in U. S. circuit court. There were some five or six suits, to the best of my recollection. My stock was fully paid up, and there was no liability against me for unpaid stock. This was paid upon the personal-liability clause and not unpaid stock.

5. Question. Did this settlement discharge you from your whole liability?

(Question overruled as not pertinent to the issues before the master.)

6. Have you any receipt for the money so paid with you at this time?

Ans. I have it not here, but have it with me at my present place of stopping in Bryan County, and could have had it here had I known it was wanted.

W'M M. ROGERS.

Sworn to & subscribed before me July 2, 1873.

ANDREW SLOAN, *Master, &c.*

Testimony of W'm Neyle Habersham.

SAVANNAH, GA., *July* 3, 1873.

W'M NEYLE HABERSHAM, being sworn and examined at the instance of Harvey Terry, esq., in answer to the questions propounded by said Terry, says:

1. Ques. Please state your name, your age, & residence.

Ans. My name is Wm. Neyle Habersham; my residence, Sav'h, Ga.; my age, 55 years.

2. Ques. Are you, or was the firm of R. Habersham & Son,
104 a stockholder in the Merchants & Planters' Bank?

Ans. We were. To the best of my recollection we had 135 shares.

3. Ques. Did you, or the firm of R. Habersham & Son, make payment to any one on account of your indebtedness to the Merchants & Planters' Bank; if so, to whom, and in what kind of money did you pay?

Ans. We did; we paid fifty dollars per share, on the stock held by us, to Messrs. Stone & Dougherty.

4. Ques. Was this money paid upon suit; if so, upon what suits?

Ans. I do not know the style of the suits; payments were made upon several suits in U. S. circuit court represented by Messrs. Stone & Dougherty.

5th. Was this money paid upon unpaid stock or upon statutory liability?

Ans. I don't know.

6. Did this payment discharge you from all your liability?

(Question overruled by the master as not proper, pertinent, or legal, considering the issues in this case.)

7. Question. Do you know of any other stockholders who have paid on their indebtedness to the Merchants and Planters' Bank?

Ans. I do. Miss Mary Telfair made a payment, but I do not know what amount. I am satisfied she paid about the same proportion on the share that we did. I know of no other parties paying, of my own knowledge.

WM. NEYLE HABERSHAM.

Sworn to & subscribed before me July 3, 1873.

ANDREW SLOAN, *Master, &c.*

105 *Testimony of S. Yates Levy.*

JULY 3, 1873.

S. YATES LEVY, being examined and sworn at the instance of Harvey Terry, esq., in answer to the questions propounded by said Terry, says:

1. Ques. Please state your name, your age, and your residence.

Ans. My name is S. Yates Levy; my age, 45 years; my residence, Savannah, Ga., and my occupation, att'y at law.

2. Question. Mr. Levy, were you attorney of Octavus Cohen in a suit or suits in U. S. circuit court upon liabilities to the Merchants and Planters' Bank?

Ans. I was attorney for the defense in one, that being all in which Mr. Cohen was interested in in the Merchants and Planters' Bank. Harden & Levy were also atty's for Mr. Murchison, but in that case Judge Harden managed the business almost exclusively, and I know nothing, comparatively, about it.

3. Ques. Did you make a payment, or know of any payments being made; and, if so, to whom were said payments made, and in what kind of money, upon indebtedness or liabilities to the Merchants and Planters' Bank?

Ans. I settled Mr. Octavus Cohen's case with Mr. Stone, who represented the plaintiffs. It was settled by a check, on what bank I forget, and not with any money paid. As to whether it was paid or not, I do not know, though I presume it was, as Mr. Cohen's mercantile standing is such I am led to suppose it was. If the money was paid on the check, it was not paid on account of any conception of indebtedness on the part of either Mr. Cohen or myself as his lawyer, either moral or
106 legal, but paid to purchase immunity from the annoyances of what he and I conceived to be a most iniquitous suit. As to the amount, I can only speak to the best of my recollection. The receipt, which is no longer in my possession, will speak with more certainty.

4. Upon what suit was the amount paid?

Ans. I think upon the suit of G. W. Hatch. I cannot speak with certainty.

5. Was that payment in full settlement of his whole liability?

(Question overruled by the master as not proper, pertinent, or legitimate to the issues referred to the master in this case.

Exception to the ruling by Harvey Terry, esq.

Witness answers of his own accord.)

Ans. The receipt was very peculiarly worded, and was rather lengthy. I cannot state, at this space of time, without the receipt before me, *state* its contents. It was not a receipt upon its face which would operate as an estoppel to any further suit upon the same subject. Although the understanding between Mr. Stone and myself was that it was in full settlement, I called Mr. Stone's attention to the terms of the receipt, stating I did not think it was safe. As well as I can recollect, the tenor of the receipt was that the payment of 50 per cent. of the claim was a bar to all further prosecution of it, until 50 per cent. should be paid by all the other stockholders on their proportionate stock. As this involved an impossibility, several of the stockholders being abso-
107 lutely insolvent, I agreed to take the receipt. This is stated entirely from memory, many months having elapsed since the settlement, and I may be mistaken. I would recommend the procuring of the original receipt. I cannot at this moment state the precise amount of the check. It was for something over one thousand dollars, being 50 per cent. on the stock and the costs of suit.

Have you any knowledge, either direct or indirect, of Mr. Murchison making a settlement with said parties on account of his indebtedness to said bank?

Ans. I have not, and cannot say whether the claim has been settled, either of my own knowledge or from hearsay. Judge Harden was exclusively the attorney in that matter, and I know nothing about it.

S. YATES LEVY.

Sworn to & subscribed before me July 31, 1873.

ANDREW SLOAN, *Master, &c.*

Testimony of Amos T. Akerman.

MAY 20TH, 1873.

AMOS T. AKERMAN sworn. Witness examined by H. Terry, esq., in person.

Did you, as counsel for any parties, and, if so, what parties, file any of the bank bills of the said bank in this cause?

Ans. I do not think I have filed any, except to this extent: I
108 came in possession of divers packages of the late Mr. Dougherty, former counsel for various parties in this case, containing many bank bills of said bank, marked as belonging to various clients of his and mine, and I delivered them to the master in gross, without assorting or counting them. I am unable to recollect, at this moment, all of the owners of said bills. Among them were W. N. Marsh, John Young, Miles G. Dobbins, Frisbee & Robert, W'm Dougherty, and several others.

2. Question. Please state the amount of the claim of each of the parties you have mentioned.

Ans. That I am unable to do accurately, upon instantaneous recollection. My recollection is that the principal of John Young's claim was $92,000; of W. N. Marsh, $50,000; of Miles G. Dobbins, $67,700; of George W. Hatch, $50,000; of W'm Dougherty, over $10,000, and this is as far as my memory goes.

3. Ques. State whether any of the claims filed by you have been withdrawn.

Ans. I have filed no claims, having come into the case recently. No claims that I represent have been withdrawn, so far as I know.

4. Ques. Does your name appear of record in all the claims you represent as attorney in this cause?

Ans. I do not know. I have announced to the court that I have succeeded to Mr. Dougherty as the counsel in his cases known as the bank cases, and suppose I am marked on the docket accordingly.

5. Ques. State whether any of the claims which have been filed, and are represented by you in this case, have been, by suit or otherwise,
109 in part or in whole, collected and paid.

Ans. There has been paid to me on the claims I represent $3,342, which is somewhat less than one per cent. on the amount. I know of no other payments of my own knowledge.

6. Ques. Was this money collected by you by suit or otherwise, and from whom?

Ans. It was paid by the estate of W. B. Heyward, and I think that there were legal proceedings pending against the estate on some but not on all of the claims I represent.

7. Ques. What was the nature of the claim on which you charged the said estate?

Ans. The deceased was a stockholder in the bank, and charged as such. I do not remember whether or not he was also liable for unpaid stock.

8. Ques. State whether there has come into your hands any memoranda or evidence from Mr. Dougherty showing what he collected on these claims.

Ans. I have found among his papers some which relate to the subject inquired of.

9. Quest. Will you produce them?

Ans. I cannot at present, they not being at hand; and as they are communications between his clients and him I do not feel at liberty to produce them unless distinctly ordered by the court, regarding them as privileged from disclosure.

10. Ques. Are the papers referred to receipts for money paid, or are they private correspondence between Mr. Dougherty and his clients?

Ans. They are of both sorts, so far as I remember their
110 contents.

11. Ques. Do you decline to produce the receipts referred to, for money paid on said claims?

Ans. I do as at present advised.

(D. T. Corbin at this stage asks for an order from the master, directed to the witness to produce the receipts referred to.

Master refuses to grant the order at this time until the matter can be fully considered by him.)

12. Ques. Do the records in the various causes which you represent, in which these claims are involved against the bank, show how much and from whom moneys have been collected thereon and all that has been collected?

Ans. I do not know.

13. Ques. Have you made an entry in the records of what you collected yourself?

Ans. I did not recover the money until yesterday, though the arrangement was made some days ago.

14. Ques. What was the title of the cause in which that money was collected?

Ans. I do not remember.

15. Ques. Are you collecting, or have you been in the habit of collecting, from various debtors or stockholders of the Merchants & Planters' Bank moneys upon these claims both with and without suit?

Ans. The only collection which I have made is the one above mentioned. If any of the parties liable to my clients as creditors of that bank shall be disposed to pay all or a portion of their liability,
111 I shall willingly receive the same and receipt therefor until the claims of my clients are satisfied.

AMOS T. AKERMAN.

Sworn to & subscribed before me this the 20th day of May, 1873.

ANDREW SLOAN,
Master, &c.

Testimony of W. N. Marsh.

MAY 20, 1873.

W'M N. MARSH, sworn, examined by D. T. Corbin, esq., counsel for H. Terry, says:

1st Ques. Are you the claimant who has filed a claim in this case against the Merchants and Planters' Bank for $50,000 of the bills of said bank upon which suit was instituted and judgment recovered for the principal debt of $50,000, interest $2,537.33, and $5,000 damages, with interest from judgment, and costs $74.50?

Ans. I am the claimant.

2. Ques. Have you any other or further claim, or are you interested in any against the said bank?

Ans. I have none; and am interested in no other claim.

3. Ques. In what court, and when, did you institute the proceedings referred to in your claim? What is the title of the action, and when was the judgment recovered?

Ans. Action was commenced in the U. S. circuit or district court at Sav'h, I think some time in the early part of 1867. I think judg-
112 ment was recovered in the latter part of 1867. The title of the action was W. N. Marsh vs. Merchants and Planters' Bank, by action at law, and W. N. Marsh, by equity suit vs. Burroughs, &c., for the unpaid stock. This equity suit was brought subsequently to the

recovering the judgment at law, and the basis of the equity suit was the common-law judgment.

4. Ques. How much money have you collected or received on this claim by virtue of those proceedings you refer to?

Ans. I do not know how much I have received. I had claims on nearly all the banks in Georgia, and Mr. Dougherty was my attorney. He remitted me, but never stated upon what claims. I repeatedly asked him for a statement, but never could get one. I suppose I have received something on this claim, and I was told by my son, whom I sent here to ascertain what had been collected on my claim, that from the best information he could get, about 11½ (eleven ½) per cent. had been collected. I think I received from Mr. Dougherty about $8,645, which he had collected on the demands of mine in his hands, with the exception of about $1,500 of said sum, which was money he had borrowed from me previously.

5. Ques. Have you any reason to believe that any portion of the money so received by you was from collections upon this claim against the Merchants and Planters' Bank?

Ans. I have. I think a portion of it was. Can't give any idea as to how much.

113 6. Ques. How much of the money collected by Mr. Dougherty on this claim was to come to you?

Ans. If the whole claim was collected I suppose it would be between $35,000.00 & $36,000.00. I never had any settlement with Mr. Dougherty, and do not know what amounts have been collected, and I have no means of knowing.

W. N. MARSH.

Sworn to & subscribed before me this 20th day of May, A. D. 1873.
ANDREW SLOAN,
Master, &c.

Testimony of George Parsons.

GEORGE PARSONS sworn, A. W. Stone, esq., appearing for witness:

1. Ques. Have you any claim filed in this case, or are you interested directly or indirectly filed by any other person or in any other person's name? If so, in whose name is such claim filed, and what is your interest therein?

(Mr. Stone, counsel for Parsons, objects to the question in toto, because Mr. Parsons is not a party to the record, not a party to the cause, and does not appear as either plaintiff or defendant against the Merchants and Planters' Bank. Master rules that, under the order referring the case to me on the 10th ins't for the taking of testimony, that the question is not a pertinent and proper one, the records showing that witness is not a party to this action, nor has not filed any claim;

114 but also rules that witness can be examined fully within the scope of the order as to any claim filed in said case.)

2. Ques. Do you know Frisbee & Roberts, who have filed a claim in this case; whether anything has been paid upon said claim; whether suit has been brought upon it heretofore in law or in equity, or have you any other knowledge in reference to it?

Ans. I do not know said parties. I know from general hearsay, but do not know of my own knowledge, that dividends have been paid. I have no personal knowledge of any suit having been brought upon the same. I

have no other knowledge in reference to the claim. I do not know how much dividends have been paid.

3d. Do you know Scott, Zerega & Co.?

Ans. There was such a firm as that in New York several years ago. Zerega & Scott I knew very well. Scott is dead. I don't know who the company was belonging to the firm. I think it was a young Scott.

4. Ques. Do you know whether they own this claim or any part of it?

Ans. I do not.

5. Ques. Do you know whether or not suit has been brought upon this claim?

(Question objected to by Mr. Stone. Objection sustained. Exception to the ruling by Mr. Corbin.)

Ans. I have no positive knowledge of the fact.

6th Ques. Are you the agent for the parties for the collection of this claim?

Ans. I am not; nor the agent for any one else.

7. Ques. Has any money been collected or received on this claim?

115 Ans. Not to my knowledge.

8. Ques. Do you know John Young, or do you know who owns the claim filed here in the name of John Young?

Ans. I do not.

9. Ques. Do you own it or any part of it?

Ans. I do not; wish I did.

10. Ques. Do you know anything further about the claim?

Ans. I do not.

11. Ques. Do you know Geo. W. Hatch, who has a claim filed against the bank; where he lives, and who the owner of this claim is?

Ans. I know Geo. W. Hatch, and he lived in New York when I knew four or five years ago. I think Geo. W. Hatch and Edwin Parsons own the claim, and the attorneys of record I have heard have an interest in it.

12. Ques. Has any money been received upon this claim; and how much?

Ans. I think there has been some collected, but I don't know how much. It was collected, I understood, through the attorneys. I don't know from whom it was collected, nor upon what suit it was collected.

13. Ques. Do your answers given in reference to the claim of Mr. Hatch upon which you have been examined apply to the other claim of file in Mr. Hatch's name?

Ans. They do, I presume. I have no reason to doubt it.

14. Ques. Have you any knowledge in reference to any claim filed in the name of any other party save those mentioned?

Ans. I have not.

15. Ques. How much money have you received yourself on

116 account of any one or all of these claims about which you have been interrogated?

Ans. I have no interest in any of these claims about which I have been interrogated, and I am not aware that I have received anything—I mean money—on them.

(Mr. D. T. Corbin, counsel for Mr. Terry, insists that the question last propounded has not been answered by the witness, and asks the master to propound the same question and demand a direct answer.

While the answer substantially answers the question, I ask the same question to the witness for a more direct answer. Andrew Sloan, master.

Question propounded again by master.)

Ans. I have not received any money on these claims or on account of them, directly or indirectly.

GEORGE PARSONS.

Sworn to & subscribed before me this 20th day of May, A. D. 1873.
ANDREW SLOAN, *Master, &c.*

Affidavit of Henry Jackson, &c., &c.

Personally appeared HENRY JACKSON, who, being duly sworn, deposes and says:

That he was a member of the late firm of Gartrell and Jackson, the other partner being Lucius J. Gartrell; that said firm did business in the city of Atlanta and county of Fulton; that in December, 1869, said firm received from Messrs. Law, Lovell and Falligant counsellors at law, doing business in Savannah, Georgia, a claim in favor of Hiram
117 Roberts, assignee of the Merchants and Planters' Bank, against Phillips, Giles and Company, for the sum of six hundred and thirty-one $\frac{99}{100}$ dollars principal, with interest from April 2d, 1864; also a claim in favor of said assignee against W. R. Phillips and Company, for the sum of thirty-three thousand dollars, with interest from January 20th, 1862; that instructions accompanied said claims to bring suit on them forthwith; that suit was immediately commenced to the May term, 1870, of Fulton superior court, on both of said claims; that the defendants filed a plea in each of said cases of set-off of one hundred and twenty-seven thousand five hundred and fifteen $\frac{99}{100}$ dollars, the two pleas covering but one claim; that judgment was claimed against the plaintiff in each case for the surplus of the set-off over and above the claims sued on; that when A. M. Wilson was appointed receiver in place of Hiram Roberts, assignee, he was on motion substituted as a party plaintiff in each of said causes, and the litigation has since been conducted in his name; that the investigation of these cases required an examination of the books of the bank, running through a series of years; the set-off pleaded being largely composed of collateral securities alleged to have been placed by the defendants in the hands of the Merchants and Planters' Bank, for which said bank had never accounted, the balance of said set-off being of bank-bills held by said defendants, and of an account for services alleged to have been rendered by W. R. Phillips when
118 in the employ of said bank; that two sets of interrogatories were sued out by Gartrell and Jackson for Hiram Roberts, assignee, one set for A. Barie, a former officer of *seb'* bank; two sets for C. W. Bruen, also a former officer of said bank, and one set for A. M. Wilson, receiver; that depohent came from Atlanta to Savannah and went over the books of said bank with A. M. Wilson, receiver as aforesaid; that the preparation of said cases has involved an immense amount of labor on account of the books of the bank being in Savannah while the litigation was in Atlanta, and on account of the great difficulty in obtaining intelligent information in reference to long-past transactions from the former officers and agents of said bank, they now feeling but little interest in the winding up and settlement of its affairs; that deponent while in Savannah had interviews with all of the aforesaid witnesses except Mr. Barie, whom he believes was absent from the city; that on account of the nature of the defenses made to said cases and the amounts involved, the litigation in Fulton superior court has completely changed front; that is to say, A. M. Wilson, receiver, is really the defendant; the claims of Phillips, Giles & Co. have been pressed with unusual vigor

and diligence by the late William Dougherty, Collier, Mynatt & Collier, Pope & Brown, and A. B. Culberson, their attorneys; that though no efforts have been spared, nor no stone left unturned, the cases in behalf of A. M. Wilson, receiver, have never been ready for trial until the October term, 1872, of Fulton superior court, on account of the failure
119 of A. M. Wilson, receiver, to forward the books of said bank, and on account of the manner in which the answers of the witnesses examined were framed, referring in every instance to the books of said bank as the basis of their information; that said receiver has, deponent believes, given as much assistance as was in his power in the preparation of said cases, but was unable to forward the books of the bank heretofore on account of their being constantly needed in Savannah in the necessary discharge of his duties; that at each terms of the court after the appearance term the defendants would press for trials, and it was only after hot contests, lasting in one case for one-half of a day, that judgments against the bank were prevented for large sums of money; that deponent has never had cases in his hands which have been of more incessant trouble and annoyance than the two above alluded to; that the responsibility devolving upon the said Lucius G. Gartrell and himself on account of the large sums involved, the eminent counsel employed against them, and the exceeding great difficulty in obtaining the necessary evidence, was of a nature peculiarly burdensome; that said cases have not yet been tried, but will in all probability be disposed of at the term of the superior court of Fulton County now in session; that the late firm of Gartrell & Jackson have filed a claim for fees due by said A. M. Wilson, receiver, in each of said cases, to wit: five hundred dollars retainer in the first mentioned; five hundred dollars additional to be paid at the termination of the litigation;
120 one thousand dollars retainer, in the second case mentioned; one thousand dollars to be due on the termination of the litigation; that deponent not only considers these charges reasonable and just, but believes that if the amounts were twice as large they would still be reasonable; that he is confident no respectable attorney would be employed in cases of similar magnitude and of similar intricacy for a less sum; that deponent has made the charges of the firm of Gartrell & Jackson so reasonable in order to avoid a contest if possible over either their priority or amount; that the aforesaid retainers have been long past due; that Gartrell & Jackson's claim for their said fees a priority as a part of the necessary expenses in the administration of the trust; that they have never been paid one penny towards said fees or the necessary costs involved in the prosecution of the litigation; that the first suit is on an account dated April 2d, 1864, and the second on a note for $33,000.00, dated July 20th, 1861, and due six months after date; that the collaterals alleged to have been placed in the hands of said bank, which have not been accounted for, amounting to seventy-three thousand seven hundred and twelve $\frac{19}{100}$ dollars, were all debts based upon a consideration of gold-value and not infected in any way with confederate money or confederate values, having been contracted prior to the late war; that the notes of said bank pleaded as set-off amount to forty-two thousand four hundred and seventy-seven dollars; that seven thousand five hundred dollars of said plea of set-off is for services alleged
121 to have been rendered by Phillips as cashier of the branch of the Merchants and Planters' Bank, doing business at Griffin, Geo., the balance being for confederate money remitted by defendants to said bank.

HENRY JACKSON.

Sworn to & subscribed before me this Nov. 7th, 1872.
ANDREW SLOAN,
Master pro hac vice.

Affidavit of W. R. Phillips.

SAVANNAH, GEORGIA, *November the 2d*, 1872.

Presented this day, $42,497, bank-bills of the bank; or, a package said to contain that amount. William R. Phillips & Co., claimants.

WILLIAM R. PHILLIPS being called before the master in said cause on the second day of November, 1872, and sworn according to the terms of the order appointing master, answering, says:

I have before the master, according to my count, forty-two thousand four hundred and ninety dollars of the bills of the Merchants and Planters' Bank, belonging to W. R. Phillips & Co., their said firm being composed of W'm R. Phillips, James S. Jones, and Thomas D. Johnson. The bills were purchased at various times in the due course of trade, and are of various denominations. No other person or person' have any interest in them but said firm of Phillips & Co. No payments of any kind have ever been made on these bills or any portion thereof.

122 We have no outside or collateral security in any way, shape, or form, to secure the payment of these bills. I have nothing to rely upon for the payment of these bills but the assets of the bank, the unpaid stock, and the personal liability of the stockholders. We have sued the bank in the superior court of Chatham County upon these bills. Said suit was commenced before the statute of limitation had run against it, and is still pending in said court. No judgment has been obtained thereon. We, Phillips & Co., were sued in Fulton superior court, by the assignee, Hiram Roberts, of bank, and is still progressing, now in the name of A. N. Wilson, receiver. This suit against us was on a note given by us to the bank. No judgment has been rendered in said suit. To said suit we have pleaded payment and an offset, by setting up in that court the bills now before the master. The note was more than paid off before it was sued, by collaterals deposited in the bank, by Phillips, Giles & Co., endorsers on said note, and more than enough collected by the bank on these collaterals to pay the entire amount of the note; which I will fully explain in setting up the claims of Phillips, Giles & Co., and W. R. Phillips & Co., which are based on collaterals and other demands outside of bank-bills. I demanded payment of Hiram Roberts, president of the Merchants and Planters' Bank, upon these bills on the 22d day of March, 1866, and payment was refused. We claim interest from that date, and the damages allowed by law. No credits have been put on the bills, and none should be entered thereon.

W. R. PHILLIPS.

Sworn to & subscribed Nov. 2, 1872.
ANDREW SLOAN, *Master, &c.*

123 *Claim of Phillips, Giles and Company.*

NOV. 2*d*, 1872.

WILLIAM R. PHILLIPS, sworn, says:

On the 20th day of July, 1861, Phillips, Giles & Co. were indebted to the Merchants and Planters' Bank in the sum of thirty-three thousand dollars, for which they procured the accommodation note of W. R.

Phillips & Co., which was endorsed by Phillips, Giles & Co., and transferred to the Merchants and Planters' Bank, for the security of which debt the bank had the collaterals of Phillips, Giles & Co., to the amount of thirty-seven thousand six hundred and forty-seven dollars and thirty-four cents. A list which collaterals appears in Exhibit B to the petition in this case. I am positive of the correctness of the amount stated in the exhibit, because I have before me the books of Phillips, Giles & Co., which correspond with said Exhibit B. I have carefully compared them. I also have before me and before the master, the pass-book in which the collateral account of Phillips, Giles & Co. with the Merchants and Planters' Bank was kept. The entries in said book are in the handwriting of Mr. Augustus Barie, cashier, and of Hiram Roberts, president of said bank. I have carefully compared this book with the books of Phillips, Giles & Co., and also with Exhibit B, above referred to, and find that they all correspond and agree perfectly. I believe that each of the notes mentioned in Exhibit B were solvent and collectable. I know of my own knowledge that all the collaterals on the exhibit except numbers (10) ten, (11) eleven, (12) twelve, (14) fourteen, (17)
124 seventeen, (19)nineteen, (20) twenty, (23) twenty-three, twenty (24) four, (25) twenty-five, and (26) twenty-six, have been paid to the bank. Of these excepted numbers I know from their admissions and entries on the pass-bank-book before mentioned, that number (19) nineteen, (20) twenty, (24) twenty-four, (25) twenty-five, and (26) twenty-six, have been paid. The remaining collaterals, to wit, numbers ten, (10,) (11) eleven, (12) twelve, (17) seventeen, and (23) twenty-three, I believe to have been collected, because they were collectible, and because I demanded them of Hiram Roberts, president of the bank, and he could not produce them, but admitted that we were entitled to all that had not been collected; but he could find but one, which he gave back, and which is not charged against the bank in Exhibit B. I refresh my memory with a letter from Hiram Roberts, president, of the 22d day of April, 1866, and now have the same before the master for examination, in which Mr. Roberts distinctly and plainly says and admits that we are entitled to have back all of our collaterals such as had not been collected; and he only produced and handed back the note above referred to, and which is not included in Exhibit B. These collaterals paid said note for thirty-three thousand dollars and left a balance due Phillips, Giles & Co., from the bank, of ($4,647 $\frac{34}{100}$) four thousand six hundred and forty-seven dollars and thirty-four cents, besides interest on all the collaterals up to the time the thirty-three-thousand-dollar note fell due, to wit, January the 20th, 1862, together with interest on above-stated balance from that date to the present, viz:

125 The bank is also indebted to Phillips, Giles & Co. in the further sum of ($6,450.00) six thousand four hundred and fifty dollars with interest from August 1st, 1863, for 43 bales cotton left with said bank and for which they have never accounted. Mr. Barie told me that the bank shipped all of the cotton of Phillips, Giles & Co. to Europe. Mr. Roberts, president of the bank, made the same statement. The bank has never accounted to us for the proceeds of this cotton. The cotton went into the hands of the bank early in the late war, but I can't say when, nor to whom it was sold. I demanded a settlement March 22, 1866, which was refused. In witness' opinion the cotton was worth the sum of ($6,450) six thousand four hundred and fifty dollars at the time I made the demand.

Phillips, Giles & Co. owe the bank an account of six hundred and thirty-one dollars and ninety cents, with interets from April 2d, 1864;

which is to be deducted from whatever may be due from the bank, as before stated.

W. R. PHILLIPS.

Sworn to & subscribed Nov. 2, 1872.

ANDREW SLOAN, *Master.*

126 *Claim of W. R. Phillips and Company.*

Nov. 2, 1872.

Nature. General business transaction. Amount, $53,882.60 prin.

WILLIAM R. PHILLIPS, sworn, says:

William R. Phillips & Co., about 20th July, 1860, deposited with the Merchants and Planters' Bank collaterals to the amount of ($35,055.85) thirty-five thousand and fifty-five dollars and eighty-five *dollars*, principal, to secure the payment of the thirty-three-thousand-dollar note mentioned and referred to in the testimony of witness just taken in the claim of Phillips, Giles & Co. vs. the bank. These collaterals were given in addition to those given by Phillips, Giles & Co., as set forth in witness' testimony in their claim, and were not to be applied to the payment of said $33,000-note unless the collaterals deposited by Phillips, Giles & Co. were insufficient to pay the same.

Exhibit A, attached to the petition of W. R. Phillips & Co. in this case, contains a correct list of said collaterals, with the amount of each, and when due. I know Exhibit A to be correct by comparing it with the books of Phillips & Co., and also with pass-bank-book referred to in evidence given by me to-day, to support the claim of Phillips, Giles & Co., all of which books are now before the master.

All of these collaterals were solvent and collectible, and have been collected by the bank, as I know of my own knowledge; and the bank owes the firm of W. R. Phillips & Co. the full amount of these collaterals, together with interest thereon, as will appear by Exhibit A.

127 In addition to the above the bank is indebted to W. R. Phillips and Co. in the sum of four thousand three hundred and twenty-six dollars and eighty cents, which they remitted to it on the 23d day of February, 1863, which was done by authority of the bank itself, and which was in confederate currency; also seven thousand ($7,000) in the same currency, remitted by them in the same way and by the same authority Aug. 3d, 1863. Interest is due on these two items. Witness produces the express-receipt of the date referred to showing the amount remitted as above stated.

The bank also owes W. R. Phillips & Co. the sum of seven thousand five hundred dollars for the services of W. R. Phillips as cashier at the branch bank at Griffin, Georgia, for the fiscal years ending 1859, 1860, 1861, besides interest to date. The service was rendered by me for the benefit of W. R. Phillips & Co., and was so understood between our firm and the bank itself. While I was to do the work as cashier, with Mr. Jones, one of our partners, as assistant, the firm was to be paid and received the money. My salary was to be $2,500 per year, and has not been paid to either myself or the firm of Phillips & Co., but is a good valid debt to which we are entitled.

W. R. PHILLIPS.

Sworn to & subscribed before me Nov. 2, 1872.

ANDREW SLOAN, *Master.*

128 *Claim of Miles G. Dobbins.*

SAVANNAH, *Georgia*, *Nov.* 17, 1872.

I have about ($67,700) sixty-seven thousand seven hundred dollars of the bills of the Merchants and Planters' Bank. All of these bills were sued in Chatham superior court, which suits are still pending. I have recovered nothing at all from that suit. I have received from Col. William Dougherty, my attorney, about three thousand dollars upon my claims above set forth, upon settlements and compromises made by him with the stockholders of the said bank, but I have never received or realized one dollar from the assets of the bank. I do not know whether Mr. Dougherty, my attorney, collected or realized more for me from other settlements made with the stockholders. If so, he has never paid it over to me. This constitutes all I have rec'd from any source.

I have no security of any kind upon which I rely for the payments of my bills. I simply rely upon the legal rights I have under the law to sue the stockholders and the bank in terms of the law. I cannot answer the nature of the suits in the State courts in my name, but the records of the superior court of Chatham County will show what they are and the nature thereof. I have no security at all to rely upon save that given me by law; but I propose to pursue my legal rights against the bank and stockholders until my debt is cancelled. I cannot pre-
129 sent my bills to the master at this time, for the reason that I have heretofore given them to Mr. Dougherty, my attorney, who has recently died, and I cannot get them. They are deposited here in Savannah, but will not be delivered to me. I have given the master an order for them. The parties having charge of them decline to give them up until a legal representative is appointed and qualified.

M. G. DOBBIN.

Sworn to & subscribed before me the 4th day of November, 1872.

ANDREW SLOAN,
Master, &c.

Claim of W. N. Marsh, of Kansas City.

SAVANNAH, *Ga.*, *Nov.* 4, 1872.

Amount claimed, $50,000, judgment on the bills; interest to judgment, 2,537.33; damages, 5,000.00, with interest, &c., as set up in petition and judgment obtained.

I have a judgment upon the bills of the Merchants and Planters' Bank, as set up in my claim, for fifty thousand dollars, principal, which was obtained upon fifty thousand dollars of the bills of said bank, together with the interest, damages, and costs set up in said judgment, which judgment was obtained in the United States circuit court for the southern district of Georgia in a bill brought by me against the stock-
130 holders, or some of them, as will fully appear by reference to the records of that court. I have no securities of any kind, and have no suit except the suit above referred to against the stockholders.

I have received from my attorney, Col. William Dougherty, nine thousand six hundred and forty-five dollars upon the judgment above referred to, which arose from statements and compromises made by my

said attorney with the stockholders of the bank. I have never received anything from the assets of the bank, nor have I rec'ed any sum other than the amount above mentioned. I do not know how much more of anything was collected or rece'd by Mr. Dougherty, my attorney, from the stockholders upon my bills or judgments. If so, he never paid it to me. I have no security to rely upon other than my judgment above referred any my legal right to pursue the bank and stockholders until my debt is paid, except the assets in the hands of the receiver.

I am also the agent of Mr. John Young, of Cincinnati, who has a demand against the Merchants and Planters' Bank, in judgment obtained in the circuit court of the United States for the southern district of Georgia. The judgment is for $92,000.00, to which costs, interests, and damages must be added. I am the duly-authorized agent of Mr. Young, and he rec'd on his bills or judgment twelve thousand dollars from Mr. Dougherty on account of collections and compromises made with the stockholders. He has rece'd nothing else, nor has he any secu-
131 rity save the judgment obtained and the bills of the bank. I do not know from whom the money paid me or Young was collected. I was never told by Mr. Dougherty. Mr. Young will pursue his claim and demands against the bank and the stockholders in terms of the law. His suits are of record and file in the U. S. circuit court here. I cannot present either the bills in this claim or in my own to the master, because they were given to Mr. Dougherty, my attorney, and by him deposited here, where I cannot get at them. If Mr. Dougherty recei'd any other amounts from the stockholders on Mr. Young's demands I do do not know it. Mr. Dougherty is dead.

W. N. MARSH.

Sworn to & subscribed before me Nov. 4th, 1872.

ANDREW SLOAN,
Master, &c.

132 *Affidavit of A. W. Stone.*

A. W. STONE, late the attorney of said Harvey Terry, in the aforesaid case, on oath saith that, as the attorney of said Terry, in June or July, 1871, he collected for Harvey Terry the sum of five thousand six hundred and fifty-nine dollars and thirty-five cents, recovered from stockholders in said M. & P. Bank in settlement; that the said sum, less commissions, was paid over to Terry by deponent.

A. W. STONE.

Subscribed & sworn to before me the 13th , 1873.

ANDREW SLOAN,
Master, &c.

133 *Statement of A. W. Stone of collections made.*

Collections from stockholders of Merchants & Planters' Bank to 1st May, 1873.

1871.		
April.	W'm & R. McIntire	6,000
"	Estate W. G. Foote	1,500
May 30.	Henry D. Weed	2,500
"	George Cornwell	500

"		Estate of W. H. Dunning		2,000
"		George B. Cumming		25,000
"		W'm M. Rogers		2,500
"	31.	Noah B. Knapp		5,000
	"	Nevitt, Lathrop & Rogers		1,000
	"	John W. Nevitt		2,500
"	"	Edward Lovell		3,550
"	"	Thos. F. Screven		8,350
"	"	Miss Mary Telfair		3,325
June	1.	Robert Stafford		25,000
"	"	Henry Lathrop		2,500
"	2.	W'm W. Lincoln		1,250
"	"	John Screven		8,300
"	3.	Robert Habersham & Son		6,750
"	"	W. & R. McIntire notes, 1 & 2 years, $1,000 each	$2,000	
		Less int. 1 % per month	320	
				1,680
"	"	George S. Nichols		2,000
"		A. Scudder		1,000
		John J. Kelly		1,250
		J. V. Connerat		1,000
1872.				
Jan'y	20.	Estate of E. Molyneux		75,000
"		Estate of J. W. Morrell, less	5,000 250	
				4,750
				$194,205

134 (Foregoing report endorsed:) Harvey Terry, compl't, and the Merchants & Planters' Bank et al., def'ts. Statement of A. W. Stone of collections made. Filed with master on the 8th of June, 1873. Andrew Sloan, master, &c.

Notice of Harvey Terry to master as to testimony.

To ANDREW SLOAN, Esq.,
Master in said cause stated:

Owing to the failure of material witnesses to obey summons served to appear and testify before the master in the cause above stated, and owing to the absence of many persons from Savannah and from this district of many persons believed to be material witnesses in said cause, say H. D. Weed, personally and as legal representative of 2 estates, Mary Telfair, Harry Lathrop, John Screven, J. F. Gilmer, D. J. Bailey, Robert Stafford, Cornelius D. Rogers, and others, vital witnesses to make full proofs of amounts paid to Stone & Dougherty, as attorneys, therefore I must either adjourn or close my testimony.

HARVEY TERRY.

SAVANNAH, *July* 3, 1873.

(Endorsement of master's report of testimony:) U. S. circuit court for the southern district of Georgia, in equity. Harvey Terry, complainant, vs. The Merchants & Planters' Bank et al. Examination before the master on motion of Harvey Terry. Master's report of the testimony. Filed Nov. 17, 1873. Ja's McPherson, clerk.

135 *Report of special master.*

HARVEY TERRY, COMPL'T,
and
THE MERCHANTS AND PLANTERS' BANK & Hiram Roberts, assignee, def'ts.

In equity. Bill filed July 12, 1869.

To the honorable the judge of the fifth circuit court of the United States for the southern district of Georgia:

In pursuance of a decretal order made and entered in this cause, and bearing date the 30th day of April, A. D. 1872, and a supplemental order, under date May 3d, 1872, and another dated 1873, each issued at stated terms of this court, held in the city of Savannah, in said district, by the first of which Andrew Sloan was appointed master in chancery in this cause, to whom it was referred to examine (under the first order) into and take an account of and report to this court, on the first day of the next term thereof after the passage of said order, the amount, character, and by whom presented, of all claims of any and all persons whomsoever, including attorneys, assignees, receivers against said bank, or rather the funds of said bank assigned by said
136 bank to Hiram Roberts for the benefit of its creditors, in any manner arising out of or connected with the execution of said trust, and by the second order of May 3, 1872, in addition to the duties above mentioned, the said master was required to count the bank-bills or notes presented to him, where the same had not been counted by an officer of this court, and also to see if any payments or credits had been made or should be allowed upon the said bills or other claims, and what those credits were, and also what security any party or parties may have and rely on for further payment of the claims presented by them respectively other than the assets of said bank, and also to report upon the priorities of said claim. And, further, by the last order of May 10, 1873, the said master was further ordered to take testimony and report—

1st. Whether any of the parties who have come in, filed their claims, and asked to be made parties plaintiffs in this cause, have brought suit at law or in equity, either or both, against the Merchants and Planters' Bank, or against any or all the stockholders of said bank, or against any or all of the officers of said bank, any one or more or all of said parties, as defendant or defendants, upon the same, or any other cause of action, since the 18th day of July, A. D. 1866, and to what result said suit or suits have been carried.

2d. Whether (if any such suits have been brought) any sum or sums of money, if so, how much and from whom, have been collected or recovered upon any of said causes of action or otherwise.

137 I, Andrew Sloan, master as aforesaid, do respectfully report that, in pursuance of said orders, I did proceed to hold a sitting in the city of Savannah, on the 21 day of October, A. D. 1872, and continued to hold said sittings from day to day until August 1, 1873, after having given due notice by publication in the Savannah News and the Atlanta Constitution, copies of which are filed in this cause; and after the meeting on said first day as aforesaid I adjourned from day to day, and during said period did investigate the matters so referred to me.

I desired to present my report at the November term, 1872, and have the same in regular and alphabetical order, but the death of the Hon. William Dougherty, who represented a large number of the claims, prevented me from so doing. I have had to begin anew and make a separate, or rather different, report than the one I had first in course of prep-

aration, (and completed as far as I could then go,) on account of the subsequent orders and the re-opening of the case, by which I have been compelled to take a large mass of testimony, and to examine largely the dockets of the State and Federal courts, as will more fully appear in a subsequent part of this report. Owing to serious illness I could not file my report at the April term of the court, as I had intended; and the order taken at that term imposed new and additional duties on me, changing my intended course of action in reference to my report. The irregular manner in which the claimants have presented their
138 bills, often presenting at the same time numerous separate packages belonging to distinct individuals, without any marks or entries designating the true ownership thereof, has given me much embarrassment, difficulty, and trouble. Many objections have been raised to various claims, which have increased the difficulties in the way of making up my report. There are several classes of claimants, bill-holders, who have made themselves parties by suitable averments, and bill-holders who have filed their bills with me and asked to share in the distribution without having filed the averments asked for in the first order for parties to come in, and then judgment creditors of the bank, some at common law and some in equity. Another fact has given me much trouble, and that is, many of the clients represented by Col. A.W. Stone, and formerly by W. Dougherty, esq., and now by Mr. Akerman, have received, upon suits against the stockholders of said bank, judgments in favor of various bill-holders for large sums on account of their unpaid stock. The claims of these bill-holders last referred to have been filed in full, without any credits made or allowed for the amounts rec'd on said judgments and settlements made, and I am at a loss to know how much of the money rec'd from the stockholders on account of said unpaid stock should be credited to each of their said clients. I have, however, attached hereto, in connection with the class of cases just referred to, a statement of the collections made by Messrs. Stone and Dougherty on account of said unpaid stock; and while I cannot
139 report definitely what credit on the dollar should be allowed on each of their claims, and not permitted to share in the distribution of the assets, yet I report the aggregate of the collections made by them as given to me, and therefore am able to report the aggregate credit to be allowed or given to their claims before distribution; all of which will more fully appear hereafter. The following is a true and correct copy of the notice published by me in pursuance of the order referring the case to me.

The original notice will be seen by referring to the record in this cause.

The several bills and claims presented to me, after being duly counted and verified by me, were put in what were deemed to be safe places, and are filed with this report. I have attached at the end of this report an index to the claims and a tabular statement thereof, so the various cases can be seen at a glance. As I am required to report upon the priorities of claims, it is proper I should state the judgments having liens upon the property, or any portions thereof. As I understand the law of the State no judgment in Georgia has a lien upon or any chose in action belonging to or in the hands of the defendant in execution, but only upon the real and personal property of the defendant; but when judgments have been obtained before sale or transfer of property at sheriff or marshal's sale, the lien upon the property so existing attaches to the
140 proceeds of the sale and the oldest lien takes the money. Whether judgments obtained against a bank after the surrender of its

charter and an assignment of its effects, takes the lien the same way upon the real and personal property and attaches to the proceeds of sale when made by a receiver appointed by the court, is one of the questions to be determined in this case. I have not placed them on the same footing in my report. I find, upon examination of the record, that the only property or proceeds thereof upon which any of the judgments obtained could claim a lien, is the proceeds of the sale of lot No. 12, New Franklin ward, in the city of Savannah, and two lots in Rome, Georgia, or rather the proceeds thereof number (81 & 82,) and the proceeds of four iron safes, all of which were sold by the receiver under the order of court, but as these judgments were all obtained since the assignment of this case, I report against any priority of payment of the proceeds of the sales mentioned to the judgments in question. 37 Ga., (611.)

A. T. ANDERSON *vs.* THE MERCHANTS & P. BANK. } Claim on bills for $763.00.

A. T. Anderson presented to me, through his attorney, Amos T. Akerman, esq., bills of said bank amounting to $763.00, which were counted by me and found to be correct. Said Anderson was made party to the suit March 19, 1872, by petition. Objections have been filed to this claim by H. Terry, esq., which objections I overruled, except to
141 the extent that Messrs. Akerman & Stone shall give credit for the amount received by them for Anderson before he can share in the distribution, which I fully explain in a later portion of this report. I, therefore, report in favor of A. T. Anderson for his pro rata on $763.00, reduced by the amount received by him from Mr. Akerman, Mr. Dougherty, or Mr. Stone, if so received.

D. C. BANCROFT *vs.* THE SAME. } Claim on bills for $486.

D. C. Bancroft, in terms of the first order in this case, presented to me $486 *dollars* in the bills of said bank, and was duly made a party by petition on March 4th, 1872. No objection having been filed to this claim, I report in favor of said Bancroft for $486.

BACKER & COHEN *vs.* SAME. } Claim on bills for $100.00.

Backer & Cohen, through their att'ys, Law, Lovell, and Falligant, presented to me in terms of the 1s' order, in said cause, one hundred dollars of the bills of said bank, and I counted the same. No objection being raised to said claim, I report in favor of said Backer & Cohen for the sum of $100.00.

E. AND M. BROWN *vs.* SAME. } Claim on bills for $1,053.00.

142 E. and M. Brown, through their att'ys, Messrs. Law, Lovell & Falligant, presented to me in terms of the first order in this cause $1,053.00, in the bills of said bank. I counted the same and found the

amount correct. I also find that on March 30th, 1872, the said E. and M. Brown were made parties to said bill. No objection having been filed to said claim, I report in favor of E. & M. Brown for $1,053.00.

A. BACKER
vs.
SAME.
} Claim on bills for $2,908.00.

A. Backer, through his attorneys, Law, Lovell & Falligant, in terms of the order in said case, presented to me the sum of $2,908.00 *dollars* in the bills of said bank. On the 30th day of March, 1872, his said attorneys made him a party to the record in said case for the said sum of $2,908.00 *dollars*. No objection having filed to said claim, I therefore report in favor of A. Backer for $2,908.00.

WOLFE BARNETTE
vs.
THE SAME.
} Claim on bills for $1,032 $\frac{00}{100}$.

Wolfe Barnette, through his attorneys, Law, Lovell & Falligant, filed with me in terms of the order in said case $1,032.00 of the bills of said bank. I counted the same and found the amount correct. I find from the record that Law, Lovell & Falligant made the said Wolfe Barnette a party to said suit on the 30th of March, 1872. It *it* should here
143 be stated that Leah Frankenstein, through her attorney, Levi S. Russell, esq., filed a petition setting up a claim to this same amount, but as the bills were filed by the attorneys of Wolfe Barnette, and he made a party before Leah Frankenstein filed her petition, I report in favor of Wolfe Barnette for $1,032.00, no objection having been filed thereto. I report against the claim of Leah Frankenstein.

BRANCH SONS & CO.
vs.
THE SAME.
} Claim on bills for $12,953.00.

On the 24th day of October, 1872, Messrs. Hartridge & Chisholm, attorneys for Branch Sons & Co., made them parties to the bill filed in this case, setting up a claim for twelve thousand nine hundred and fifty-three dollars in the bills of said bank, ($12,953.) Upon counting the same I found that there were only $12,159 in the bills of said bank. There was a receipt of Mr. McNish among said bills to cover the difference, which I handed back to Messrs. Hartridge & Chisholm. No objection having been filed to this claim, I report in favor of Branch Sons & Co. for the sum of $12,159.00, this being the amount of their bills actually filed. The receipt handed back explains the discrepancy between the amount claimed and the amount.

144 W. H. BAKER, FOR THE ESTATE OF MORRELL,
vs.
THE SAME.
} Claim on bills for $4,944.00.

W. H. Baker, esq., for the estate of Morrell, presented to me $4,944 of the bills of said bank. I counted the same and found the amount correct. He asks to be allowed to share in the distribution of the assets of said bank. He has never filed a petition to be made a party to said suit, but as he has filed his bills and can be made a party at any time,

if necessary, I report in favor of said W. H. Baker, for the estate of Morrell, for the sum of $4,944.00, no objection having been filed to his claim.

EDWARD BYRNES
vs.
THE SAME.
} Claim on bills for $53.

Edward Byrnes, esq., presented to me $53 in the bills of said bank, and asks to share in the distribution of the assets. He has filed no petition to be made a party, but as there are no objections filed to his claim, and as I found the amount correct upon counting the bills, I therefore report in favor of Edward Byrnes for the sum of $53.00.

OCTAVUS COHEN
vs.
THE SAME.
} Claim on bills for $2,000.

145 Octavus Cohen, esq., presented to me $2,000 of the bills of said bank, and asked to be permitted to share in the distribution of the assets of said bank. I counted said bills and found the amount correct. Mr. Cohen has not filed any petition making himself a party to said action, but believing that he is entitled to share in the distribution of the assets, and no objection having been filed, I report in favor of said Octavus Cohen for $2,000.

ELIAS COHEN FOR ADOLPH ABRAMS
vs.
THE SAME.
} Claims in bills for $2,920.

Adolph Abrams, through his attorney, A. W. Stone, esq., filed with me the claim of said Abrams for $2,920 in terms of the order in this case. I counted the bills and found the amount correct. On March 25th, 1872, Mr. Abrams was made a party to the record by his attorney. No objection having been filed to said claim, I report in favor of said claim for $2,920.

SUSAN ANN CUYLER
vs.
THE SAME.
} Claim on bills for $300.

Susan Ann Cuyler filed with me $300 in the bills of said bank, and applied to be made a party to this suit on October 30th, 1872. I counted the bills and found the amount correct. No objection having been filed to this claim, I report in favor of Susan Ann Cuyler for $300.

146 JOHN COOPER
vs.
THE SAME.
} Claim on bill for $6,302.

October 25th, 1872, John Cooper, esq., by his attorneys, Thomas E. Lloyd and J. R. Saussy, filed his application to be made a party to this suit, and filed a claim for $6,302. I counted said bills and found the amount to be $6,299 instead of $6,302. No objection having been filed to said claim, I report in favor of John Cooper for $6,299.

COHEN, J. J., & SONS
vs.
THE SAME.
} Claim on bills for $99.

John J. Cohen & Son, through their attorney, Laws, Lovell & Falligant, on March 30th, 1872, applied to be made parties to this suit, and set up their claim for $99. I counted bills thus filed with me and found the amount to be correct. No objection having been filed to said claim, I report in favor of J. J. Cohen & Son for $99.

MARY CUSICK
vs.
THE SAME.
} Claim on bills for $300.

Mary Cusick, through her attorney, J. R. Saussy, filed with me her claim for $300, in terms of the orders in this case, and asks to share in the assets. I counted said bills and found the amount correct. No objection having been filed, I report in favor of Mary Cusick for $300.

147 J. G. COHEN
vs.
THE SAME.
} Claim for $1,316 on bills.

Messrs. Law, Lovell & Falligant, on March 30th, 1872, filed the petition of J. G. Cohen for $1,316. Upon counting the bills I find only $328. No objection having been filed to this claim, I report in its favor for $328.00. Since reporting the above, I have found the bills of Cohen, and report in his favor on $1,316.

JIM COPE
vs.
THE SAME.
} Claim on bills for $350.

Jim Cope, through his attorney, Thomas M. Norwood, esq., presented to me his claim for $350, and filed his petition to be made a party for that amount. I counted the bills and found them to be correct. No objection having been filed to said claim, I report in favor of said Jim Cope for $350.00.

VALENTINE KLEIN
vs.
THE SAME.
} Claim on bills for $116.

Valentine Klein, through his attorney, Thomas M. Norwood, esq., presented to me his application to be made a party for $116. I counted the bills presented, and found the amount correct. No objection having been filed, I report in favor of the claim of Valentine Klein for $116.00.

148 WILLIAM CULLOM
vs.
THE SAME.
} Claim on bills for $45.

William Cullom presented to me $45 of the bills of the Merchants and Planters' Bank, and asks a share in the assets. He has filed no regular written application or petition to be made party to this suit, but having filed his bills in time, and no objection having been urged, I report in favor of William Cullom for $45.

GEORGE P. CURY
v.
THE SAME. } Claim on bills for $3,151 & $21.

George P. Cury, by his attorney, George A. Mercer, esq., presented to me, in terms of the orders in this case, thirty-one hundred and fifty-one (3,151) dollars in the bills of said bank, which were counted by me and found to be correct. His petition to become a party to the record was duly filed. In addition to the above Geo. A. Mercer, esq., has since presented me $21 *dollars* in the said bills, which last amount is not embraced in the petition of said Curry. There being no objection filed, I report in favor of Geo. P. Curry for the $3,151 and the subsequent $21; making a total of $3,172.

W'M DOUGHERTY
vs.
THE SAME. } Claim on bills for $5,449.

149 I will report upon this claim when I take up the cases to which objections have been filed. This will be done at a later stage of the report. I find, however, upon counting the bills presented in this claim, that there are only $5,098, making the count $351 less than the claim set up in the petition to be made a party.

CHARLES L. DELAMOTTA
vs.
THE SAME. } Claim on bills for $26.

Charles L. DeLamotta presented to me, in due time, under the orders in this case, $26 of the bills of the Merchants and Planters' Bank. He did not file any written petition to be made a party, but asks to share in the distribution of the assets. No objection having been filed to his claim, and finding the amount correct upon counting the bills, I therefore report in favor of said DeLamotta for $26.

JOHN C. DRAKE
vs.
THE SAME. } Claim on bills for $100.

John C. Drake, by his attorneys, Law, Lovell & Falligant, filed with me one hundred dollars in bills of said bank, and asks to share in the distribution of the assets. On April 30, 1872, his said attorneys made him a party to said suit by filing petition. No objection having been filed to this claim, I therefore report in favor of John C. Drake for the sum of $100.

150 MARTIN DUGGAN
vs.
THE SAME. } Claim on bills for $425.00.

Martin Duggan, esq., presented to me $425 of the bills of said bank, which I found, upon counting the same, to be correct. He asks to be allowed to share in the distribution of the assets of said bank. He has not filed any petition in writing to be made a party to said suit. No objection having been filed to his claim, I report in favor of said Duggan for $425.

FRANCIS ENRIGHT
vs.
THE SAME.
} Claim on bills for $64.

Francis Enright filed with me his claim for $64, in the bills of said bank, which I found correct, upon counting. On Oct. 26th, 1872, he was made a party to said suit by petition in writing for that purpose. No objection having been filed to his claim I report in his favor for $64.

L. N. FALLIGANT, TRUSTEE,
vs.
THE SAME.
} Claim on bills for $1,211.

L. N. Falligant, trustee, through his attorneys, Law, Lovell & Falligant, presented to me in time, under the orders in this case, his claim on the bills of said bank for $1,211. Upon counting the same I
151 found that there were $1,202 instead of $1,211. I find that, on March 30th, 1872, said Falligant was made a party to said suit for $1,211. No objection having been filed to this claim I report in favor of L. W. Falligant, trustee, for $1,202, the amount of my count, $1,202 instead of $1,211, as claimed.

W. CAMP
vs.
THE SAME.
} Claim on bills for $72.

On the 30th day of March, 1872, W. Camp, esq., was made a party to the record by his attorneys, and filed his claim for $72, in the bills of said bank. These I counted and found correct. No objection having been filed to this claim, I report in favor of W. Camp for $72.

LOUIS FRIED
vs.
THE SAME.
} Claim on bills for $316.

Louis Fried presented to me, under the orders in this case, $316 of the bills of said bank, and asks to share in the distribution of the assets thereof. I counted the bills on the day of presentation, and found the amount correct. He has not been made a party to this suit by written petition; but no objection having been filed to his claim, I report in favor of Louis Fried for $316.

GEO. W. GANNANY
vs.
THE SAME.
} Claims on bills for $3,103.

152 George W. Gannany, through his attorneys, Law, Lovell & Falligant, under the orders in said case, filed with me his claim for $3,103 on the bills of said bank, which I counted and found correct. I find that he was on March 30th, 1872, made a party to said suit by Messrs. Law, Lovell & Falligant, for $3,103. No objection having been raised to this claim, I report in favor of Geo. W. Gannany for $3,103, the amount of his claim.

J. & T. & H. T. GREEN
vs.
THE SAME.
} Claim on bills for $7,913.

Messrs. Law, Lovell & Falligant presented to me a package of the

bills of the Merchants & Planters' Bank, purporting to contain $7,913, and belonging to J. & T. & H. T. Green. Upon counting the same I find the amount of the bills to be $7,976, instead of $7,913 as claimed, being $63 over. These parties on March 30th, 1872, through their said attorneys, by petition with proper allegations, were made parties to this suit for 7,913. No objection having been filed to this claim, I report in favor of the claimants for $7,976, the amount of my count.

JOHN M. GUERARD
vs.
THE SAME.
} Claim on bills for $400.

John M. Guerard, esq., presented to me $400 in the bills of said bank, which I verified by count, and found the amount correct. He
153 also filed with me his petition to be made a party to this suit setting up his claim. All of which was done in terms of the orders in the case. No objection having been filed to his claim, I therefore report in favor of the claim of said John M. Guerard, esq., for $400.

JOHANNA GEARON
vs.
THE SAME.
} Claim on bills for $508.

Johanna Gearon, through her attorney, J. R. Saussy, esq., filed her claim in this case for $508, on the bills of said bank, and presented to me the bills, which I counted and found correct. She was made a party to the record by her said attorney for $508. No objection having been filed, and the proceedings in regard to this claim having been done in accordance with the orders in this case, I report in favor of Johanna Gearon for $508.

W'M NEYLE HABERSHAM
vs.
THE SAME.
} Claim on bills for $8,008.00.

W. Neyle Habersham, through his att'y, Tho's E. Lloyd, esq., filed with me on October 26th, 1872, his bills of the Merchants and Planters' Bank, which I counted and found to amount to $8,008. On Oct. 26th, 1872, said Habersham was made a party to this suit his said attorney for $8,008. No objection having been filed to said claim, I therefore report in favor of W. Neyle Habersham for $8,008.

154 ALFRED HAYWOOD
vs.
THE SAME.
} Claim on bills for $800.

Alfred Haywood, by his attorney, John M. Guerard, esq., filed with me in this case his petition to be made a party, and presented to me at the same time his bills setting the same up in his petition at $800. Upon counting the bills I found them to amount to $806, instead of $800, as claimed. No objection having been filed to this claim, I report in favor of Alfred Haywood for $806, the amount of my count, instead of $800, as set up in his petition.

WILLIAM HUSSEY
vs.
THE SAME.
} Claim on bills for $58.

William Hussey, esq., presented to me $58 in the bills of said bank,

in time prescribed by the orders in said case, and asks to share in the assets. He has not filed any written petition to be made a party to the suit; but no objection having been filed to his claim, I report in favor of William Hussey for $58.

MILO HATCH
vs.
THE SAME.
} Claim on bills for $603.

Milo Hatch, through his attorneys, Messrs. Law, Lovell & Falligant, on the 30th day of March, 1872, filed with the clerk his petition to be made a party to this suit for $603, on the bills of said bank, which I verified by counting. No objections having been filed, I report in favor of Milo Hatch, esq., for $603. $603.

155 W. P. L. HORN
vs.
THE SAME.
} Claim on bills for $25.

March 30th, 1872, Messrs. Law, Lovell and Falligant, attorneys for said Horn, made him a party to said suit for $25, and afterwards filed with me $25 in the bills of said bank, which I verified by count. No objection having been filed, I report in favor of said Horn for $25.

H. D. HEADMAN
vs.
THE SAME.
} Claim on bills for $130.

H. D. Headman presented to me in person $130, in the bills of said bank, within the time prescribed by the order in said case, and asks to be allowed to share in the distribution of the assets. He has filed no petition making himself a party, but having found the amount correct upon counting the bills, and no objection having been filed, I report in favor of this claim for $130.

C. C. HARDWICK
vs.
THE SAME.
} Claim on bills for $8,860.

C. C. Hardwick, through his attorney, R. E. Lester, was on the 8th of October, 1872, made a party to said suit on $8,860, and presented me his bills which amounted to $8,800, instead of $8,860, the count being $60 under the claim as set up in the petition. No objection having been filed to this claim, I report in favor of C. C. Hardwick for 8,800, the amount of my count, instead of $8,860, the amount claimed.

156 JOHN HANLON
vs.
THE SAME.
} Claim on bills for $219.

John Hanlon, by his attorney, J. R. Saussy, esq., filed with me $219 in the bills of said bank, which I verified by counting the same. He also filed his petition to be made a party for that amount. No objection having been filed to this claim, I report in favor of John Hanlon for $219.

JOHN P. HENNICK
vs.
THE SAME.
} Claim on bills for $194.00.

John P. Hennick, esq., on the 26th day of October, 1872, filed with

me $194 in bills of said bank, which I counted and found correct. He also on the same day filed his petition to be made a party to the suit. No objection having been filed to this claim, I report in favor of John P. Hennick for $54.00.

ELIZABETH HOBKIRK
vs.
THE SAME.
} Claim on bills for $54.00.

On the 29th day of October, 1872, Mrs. Elizabeth Hobkirk filed with me $54 in the bills of said bank, which I counted and found correct, and on the same day she filed her petition to be made a party to said suit. No objections having been filed to this claim, I report in favor of Elizabeth Hobkirk for $ $54.00.

MRS. ANN HALL
vs.
THE SAME.
} Claim on bills for $63.

Mrs. Ann Hall presented to me in time, $63 in the bills of said
157 bank, and asks to share in the distribution of the assets. Upon counting I found the amount correct. She has not filed any petition to be made a party, but no objections having been filed, I report in favor of Mrs. Ann Hall for $63.

KETCHUM & HARTRIGE
vs.
THE SAME.
} Claim on bills for $4,062.

On the 30th day of March, 1872, Messrs. Ketchum & Hartridge were made parties to said suit by their attorney, W. U. Garrard, esq., and filed with me, through said attorney, $4,062 in the bills of said bank, which I found to be correct. No objections having been filed to this claim, I report in favor of Messrs. Ketchum & Hartridge for $4,062.00.

JOHN KING
vs.
THE SAME.
} Claim on bills for $236.

October 18th, 1872, John King, esq., was, through Attorney W. U. Garrard, esq., made a party to said suit for $236, and filed with me $236 in the bills of said bank, which I verified by count and found correct. No objections having been filed to this claim, I report in favor of John King for $236.

L. KOHN
vs.
THE SAME.
} Claim on bills for $210.

L. Kohn, through his attorneys, Law, Lovell & Falligant, pre-
158 sented to me two hundred and ten dollars in the bills of said bank in terms of the orders, which I counted and found correct. On the 30th day of March, 1872, his said attorneys made him a party to this suit by petition duly filed for said amount. No objection having been filed to this claim, I report in favor of L. Kohn for $210.

JOSEPH LIPPMAN
vs.
THE SAME.
} Claim on bills for $515.

Joseph Lippman, through his attorneys, Messrs. Law, Lovell & Falligant, presented to me his claim for $515 in the bills of said bank in time under the orders in said case. I counted the same and found that there were $514 instead $515, as claimed. Joseph Lippman, having been made a party to this suit on the 30th day of March, 1872, by his said attorneys, and no objection having been filed thereto, I report in favor of Joseph Lippman for the amount of my count, viz, $514.

MRS. O. A. LA ROCHE
vs.
THE SAME.
Claim on bills for $117.

Mrs. O. A. La Roche, through Mr. Cabanniss, presented to me $117, in the bills of said bank, and asks to share in the distribution of the assets. The notes were filed in due time. She did not file any petition to be made a party, but no objection having been filed to her claim, I report in her favor for $117. $117.

159 E. LOVELL
vs.
THE SAME.
} Claim on bills for $3,890.

E. Lovell, through his attorney, Mr. Thomas E. Lloyd, filed with me his claim for $3,890 in the bills of said bank in due time. I counted the same and found the amount correct. On April 30, 1872, his said attorney made him a party to this suit by regular written petition for $3,890. No objection having been filed to this claim, I report in favor of E. Lovell for $3,890.

R. L. MOTT
vs.
THE SAME.
} Claim on bills for $1,935.

R. L. Mott, esq., before I was appointed master in this case, gave me $1,935 in the bills of said bank to file, and represent as his attorney. I filed the same with the clerk of this court, and also as his attorney, on March 4th, 1872, filed his application to be made a party to the record. After having been appointed master in this cause, I turned the Mott claim over to W. U. Garrard, esq., to represent and look after as attorney. I then counted the bills and found the amount correct. No objections having been filed to this claim, I report in favor of R. L. Mott for $1,935. $1,935.

MRS. J. S. MARSHALL
vs.
THE SAME.
} Claim on bills for $182.

Mrs. J. S. Marshall, through her attorneys Law, Lovell & Falligant, filed with me $182 in the bills of said bank, which I verified
160 by count. On March 30th, 1872, she was made a party to this suit for that amount. No objections having been filed to this claim, I report in favor of Mrs. J. S. Marshall for $182. $182.

JOHN MCHUGH
vs.
THE SAME.
} Claim on bills for $117.

John McHugh, on the 28th day of October, 1872, presented to me $117 in the bills of said bank, and on the same filed his petition to be made a party to the suit. I counted the bills and found the amount correct. No objection having been filed to this claim, I report in favor of John McHugh for $117. $117.

MCNISH & BAYNARD
vs.
THE SAME.
} Claim on bills for $157.

McNish & Baynard, through their attorneys, Law, Lovell & Falligant, filed with $157 in the bills of said bank, which I verified by count. And on the 30th day of March, 1872, they were made parties to said suit of H. Terry, by their said attorneys, for that amount. No objection. I report in their favor for $157.

ABRAM MINIS
vs.
THE SAME.
} Claim on bills for $60.

Abram Minis, by his attorneys, Messrs. Law, Lovell & Falligant, presented his claim for $60 on the bills of said bank. I counted the
161 same, and found there was $101 in bills, instead of $60, as claimed. On the 30th day of March, 1872, he was made a party to this suit, by his said attorneys, for $60, that being $41 less than the bills presented. No objections having been filed to this claim, I report in favor of Abram Minis for $101, instead of $60, as claimed.

MARGARET MADDOX
vs.
THE SAME.
} Claim in bills for $100.

Mrs. Margaret Maddox, by her attorney, J. R. Saussy, on the 1st day of July, A. D. 1873, presented to me $100 in the bills of said bank, which I verified by count. On the same day she was made, or filed with me her petition to be made, a party to this suit for that amount. No objections filed. I report in her favor for $100. $100.

ROBERT P. MEYERS
vs.
THE SAME.
} Claim on bills for $80.

Robert P. Meyers, esq., presented to me in time under the orders in this case $80 in the bills of said bank, and asks to be allowed to share in the distribution of the assets of said bank. I counted the bills and found the amount correct. No petition to be made party was filed, but no objection having been made to this claim, I report in favor of Robert P. Meyers for $80. $80.

A. T. MCINTIRE
vs.
SAME.
} Claim on bills for $1,896.

162 McINTIRE & YOUNG
vs.
THE SAME. } Claim on bills for $550.

On the 30th day of April, 1872, A. T. McIntire, through his attorneys, Law, Lovell & Falligant, was made a party to said bill for $1,896, and McIntire & Young for $550. I counted the bills of the respective parties, and found the amounts claimed by them, as above set forth, correct. No objections having been filed, I report in favor of A. T. McIntire for $1,896. $1,896.
And in favor of McIntire & Young, for $ $550.

MARCH, PRICE & CO.
vs.
THE SAME. } Claim on bills for $1,997.

March, Price & Co., through their att'ys, Jackson, Lawton & Basinger, presented to me $1,997 in the bills of said bank in time, under the orders in said cause, which I verified by count. And on the first day of April, 1872, they were made parties of record by their said attorneys for $1,997. No objections filed. I therefore report in favor of March, Price & Co. for $1,997.00. $1,997.00.

J. W. NEVITT
vs.
THE SAME. } Claim on bills for $2,600.

On the 18th day of March, A. D. 1872, J. W. Nevitt was made a party to this suit for $2,600, and afterwards the bills presented to me by A. W. Stone, esq., which I verified by count. No specific objection has been made to this claim, and no objection arises thereto, unless
163 it be the objection hereinafter set out in regard to the claims of certain parties represented by Messrs. Stone & Dougherty. Such being the case, I report in favor of this claim for $2,600.

JOHN NEAL
vs.
THE SAME. } Claim on bills for $92.

John Neal, esq., was made a party to the record on March 30th, 1872, by his attorneys, Law, Lovell & Falligant, for $92, and the bills presented afterwards, which I verified by court. No objection filed. I report in his favor for $92.00.

GEO. T. NICHOLS
vs.
THE SAME. } Claim on bills for $50.

Geo. T. Nichols, esq., presented to me his bills, amounting to $50, and asks to share in the distribution of the assets. He filed no written petition to be made a party, but no objections having been filed to his claim I report in his favor for $50. $50.00.

GEO. S. NICHOLS
vs.
THE SAME. } Claim on bills for $2,000.

Geo. S. Nichols, by his attorney, J. R. Saussy, esq., presented to me

in terms of the orders in this cause $2,000 in the bills of said bank, which I verified by count. He was made a party to the record. No objections having been filed to this claim, I report in his favor for $2,000.00.

164 B. F. OLIVER *vs.* THE SAME. } Claim on bills for $20.

B. F. Oliver, by his attorneys, Law, Lovell & Falligant, presented to me in terms of the orders in said cause $20 in the bills of said bank, which I counted and found correct. He was, on the 30th day of March, 1872, made a party to the record by his said attorneys. No objections having been filed, I report in his favor for $20.00.

JAMES O'BYRNE *vs.* THE SAME. } Claim on bills for $48.

October 28th, 1872, James O'Byrne, esq., presented to me $48 in the bills of said bank, which I verified by count. On the same day he filed his petition to be made a party of record for $48. No objection having been filed to said claim, I report in favor of James O'Byrne, for $48.

EDWARD O'BYRNE *vs.* THE SAME. } Claim on bills for $946.

Edward O'Byrne, by his attorney, John O. Ferrill, esq., presented to me his claim in $946 in the bills of said bank, in terms of the orders in the cause. I verified the bills by count. He was made a party to the suit by his said attorney for $946. No objections having been filed to this claim, I report in favor of Edward O'Byrne, for $946.00.

165 THE SOUTHERN EXPRESS CO. *vs.* THE SAME. } Claim on bills for $5,692.

I will report upon this claim when I take up the cases of Messrs. Dougherty & Stone, at a later stage of this report.

J. C. ROWLAND *vs.* THE SAME. } Claim on bills for $2,220.

On the 28th day of February, A. D. 1873, J. C. Rowland, by his attorney, Chas. N. West, presented to me $2,220 in the bills of said bank, which I verified by count. On the same day he filed his petition in writing with me to be made a party for that amount. No objections having been filed to this claim, I report in favor of J. C. Rowland for $2,220.00.

F. J. RUCKERT *vs.* THE SAME. } Claim on bills for $65.

F. J. Ruckert, in due time under the orders, presented to me $65 in

the bills of said bank, which I verified by count. He has filed no written petition to be made a party, but asks to share in the distribution of the assets. No objections having been filed to his claim, I report in its favor for $65.00.

WILLIAM ROSE
vs.
THE SAME.
} Claim on bills for $159.

William Rose, esq., presented to me $159 in the bills of said bank and asks that he may be allowed to share in the assets thereof. I
166 counted the bills and found the amount correct. He has not filed any written petition making himself a party to the record, but no objections having filed to his claim, I report in its favor for $159.00.

JOHN STODDARD, TRUSTEE,
vs.
THE SAME.
} Claim on bills for $5,506.

On the first day of April, 1872, John Stoddard, trustee, was made a party to the record in this case for $5,506, by his attorneys, Law, Lovell & Falligant, and afterwards the bills presented to me. I counted the bills and found that they amounted to $6,606 instead of $5,506 as claimed. No objection having been filed to this claim, I therefore report in favor of John Stoddard, trustee, for $6,606 the amount of my count, instead of $5,506 as claimed.

Report in Stoddard's favor $6,606.

F. R. SCOTT
vs.
THE SAME.
} Claim on bills for $15,000.

On the second day of May, 1872, F. R. Scott, through his attorneys, Messrs. Hartridge & Chisholm, was made a party to the record for $15,000. Afterwards, when I requested of Mr. W. S. Chisholm the bills upon which this claim was based, he only presented me, through his clerk, Mr. Howell, or Mr. Denmark, $2,937 in bills of said bank, which I counted. Judge Chisholm, one of the attorneys for claimants, states to me that the discrepancy between the amount set up in the petition to be made party, and the number of bills presented, was owing to
167 the fact that Messrs. Branch, Sons & Co., had filed a petition for the bills claimed in this petition and had presented them to me in a separate claim. It will be seen by reference to the claim of Branch, Sons & Co., already reported on, that they have set up a claim for $12,953, and that I reported in their favor for $12,159. Such being the case, I report in favor of F. R. Scott for $2,937, the amount of his bills presented, and not the $15,000 as claimed.

ROBERT STAFFORD
vs.
THE SAME.
} Claim on bills for $30,000.

Robert Stafford, esq., through his attorneys, Messrs. Law, Lovell & Falligant, presented to me $30,000.00 in the bills of said bank, which I verified by count. On the 30th day of April, 1872, his said attorneys

made him a party to the record for $30,000. No objection having been filed to this claim, I report in favor of Robert Stafford for $30,000.00.

J. J. SCARBOROUGH *vs.* THE SAME. } Claim on bills for $4,243.

THOMAS SWEENEY *vs.* SAME. } Claim on bills for $470.

J. W. SKIPPER *vs.* THE SAME. } Claim on bills for $192.

J. J. Scarborough, Thomas Sweeney, and J. W. Skipper, pre-
168 sented to me their bills, through their attorney', Law, Lovell & Falligant, as follows, to wit:

J. J. Scarborough	$4,243
Thomas Sweeney	$ 470
J. W. Skipper	$ 192

I verified by count the bills of each of said parties. Each of them were also made parties to this suit in terms of the order in that connection. No objection having been filed to either of these claims, I report as follows, in their favor, to wit:

In favor of J. J. Scarborough	$4,243
" " " Thomas Sweeney	$ 470
" " " J. W. Skipper	$ 192

JOSEPH S. WRIGHT *vs.* THE SAME. } Claim on bills for $2,625.

On the fourth day of March, 1872, I, as the then attorney of Joseph S. Wright, made him a party to the record in this case, and afterwards amended his petition by increasing the amount for which he was made a party. He was made a party for the aggregate sum of $2,265. I counted said bills and found the amount correct. Having been, subsequent to my employment by him, appointed master in this cause, I turned the claim of said Joseph S. Wright over to W. U. Garrard, esq., to look after as attorney, and relinquished my interest in the same. No objections having been filed to this claim, I report in favor of Joseph S. Wright for $2,625.

169 WEEDS & CORNWELL *vs.* THE SAME. } Claim on bills for $274. $274.

B. S. WILSON *vs.* THE SAME. } Claim on bills for $78.

D. R. WRIGHT *vs.* THE SAME. } Claim on bills for $619.

On the 30th day of March, 1872, Messrs. Weeds & Cornwell, B. S. Wil-

son, and D. R. Wright were made parties to this cause by their attorneys, Law, Lovell & Falligant, for the following amount respectively, viz:

Weeds & Cornwell for..... $274
B. S. Wilson " ..... $ 78
D. R. Wright " $619

I counted the bills and found the amounts correct. No objections having been filed, I report in favor of Weeds & Cornwell for..... $274
In favor of B. S. Wilson for..... $ 78
" " " D. R. Wright " $619

GEO. WELLBROOK vs. THE SAME. } Claim on bills for $196.

JOHN M. B. LOVELL ET AL., EXECUTORS of W. H. Wiltberger, vs. THE SAME. } Claim on bills for $600.

Messrs. Law, Lovell & Falligant, attorneys, made Geo. Wellbrook a party to the record, on March 30th, 1873, for the sum of $196, and afterwards made John M. B. Lovell et al., executors of W. H. Wilt-
170 berger, dec'd, parties to said record for $600. I counted the bills of these claimants respectively, and found the amounts correct. No objection having been filed to either of these claims, I report in favor of Geo. Wellbrook for..... $196
In favor of Jno. M. B. Lovell et al., ex'rs..... $600

JAMES WHITE vs. THE SAME. } Claim on bills for $141. $141.00.

James White filed with me $141 in the bills of said bank in time under the orders in that connection, and asks to be allowed to share in the assets. I verified his bills by count. He has filed no petition in writing to be made a party, but as no objections have been filed to his claim, I report in favor of James White for $141.00.

WYLLY WOODBRIDGE vs. THE SAME. } Claim on bills for $255.

Wylly Woodbridge, esq., on the 1s' day of April, 1872, made himself a party to the record for $255, and has presented his said bills to me, which I verified by count. No objections having been filed to this claim, I report in favor of Wylly Woodbridge for $255.

R. D. WALKER vs. THE SAME. } Claim on bills for $1,300. $1,300.00.

On the 25th day of October, 1872, R. D. Walker was made a party to the record by his attorney, J. R. Saussy, for $1,300.00. The bills
171 were presented to me and the count verified. No objections having been filed to this claim, I report in favor of R. D. Walker for $1,300.00.

WILCOX, GIBBS & Co.
vs.
THE SAME.
} Claim on bills for $19.00.

Messrs. Wilcox, Gibbs & Co. presented to me $19 in the bills of said bank, which I verified by count. They have filed no petition making themselves parties, but as no objection has been filed to this claim, I report in favor of Wilcox, Gibbs & Co. for $19.00.

WILSON & BRO.
vs.
THE SAME.
} Claim on bills for $79.00.

Messrs. Wilson & Bro., through their agent here, (they being residents of Jacksonville, Fla.,) presented to me $79.00 in the bills of said bank, which I verified by count. They have not made themselves parties to the record by petition, but as no objection has been filed thereto, I report in favor of Wilson & Bro. for $79.00.

JA'S M. WILLIS
vs.
THE SAME.
} Claims on bills for $1,790.

On the 8th day of April, 1872, I, as the attorney of Ja's M. Willis, made him a party to the record, and afterwards amended his application by increasing the amount of his bills. I counted the bills and found that there was $1,790. Having afterwards been appointed master in this cause, I relinquished my interest in this claim and turned the same over to W. U. Garrard, esq., att'y at law. No objection having
172 been filed to this claim, I report in favor of James M. Willis for $1,790.00.

BRYAN & HUNTER
vs.
THE SAME.
} Claim on bills of $26,500.

On the first day of April, A. D. 1872, Messrs. Bryan & Hunter, through their attorneys, Jackson, Lawton & Basinger, filed their claim with me for $26,500, on the bank bills of said bank, or I should say, filed their petition to be made parties for that amount. Gen'l A. R. Lawton presented to me said bills, and, having verified them by count, and no objection having been filed to their claim, I report in favor of Messrs. Bryan & Hunter on $26,500.

GILBERT A. WILKINS
vs.
THE SAME.
} Claim on bills for $9,425.

Messrs. Law, Lovell & Falligant, on the day of , filed with me the claim of Gilbert A. Wilkins for $9,425 on the bills of said bank, in the terms of the order referring cause to me. I find upon examining the record that he was duly made a party for that amount. I counted the bills, and, no objection having been filed to this claim, I report in favor of Gilbert A. Wilkins for the bills of said bank for $9,425.00.

JOHN W. NEVITT
vs.
THE SAME.
} Claim on bills for $3,000.

John W. Nevitt, by his attorneys, Messrs. Law, Lovell , filed
173 with me his claim on $3,000 of the bills of said bank, in the terms of the orders referring cause. I counted the bills and found the amount correct. I also find that on April 30th, 1872, the said Nevitt was made a party to the record, by his said attorneys, for $3,000. No objection having been filed to this claim, I report in favor of John W. Nevitt on $3,000 of the bills of said bank.

W. P. GOODALL
vs.
THE SAME.
} Claim on bills for $330.

W. P. Goodall, by his attorneys, Jackson, Lawton & Bassinger, filed with me his claim for $330 on the bills of said bank. On April 1', 1872, he was made a party to the record for said amount. Upon counting the bills I found them to amount to $380 instead of $330, being an excess of $50 over the claim. No objection having been filed to the claim, I report in favor of W. P. Goodall on $380 the amount of the count, $380.

W. P. GOODALL
vs.
THE SAME.
} Claim on bills for $314.

W. P. Goodall, esq., by his attorneys, Law, Lovell & Falligant, filed with me his claim for $314 on the bills of said bank, and I find he was made a party to the record by his said attorneys on March 30, 1872, for that amount. I counted the bills and found amount correct. No objections filed, I report in favor of W. P. Goodall on bills for $314.

174 F. J. CHAMPION
vs.
THE SAME.
} Claim on bills for $32,026.00.

F. J. Champion, by his attorneys, Law, Lovell & Falligant, filed with me his claim on bills for $32,026.00 in terms of the orders in this cause. I counted the bills and found the same correct. Upon examining the record I find that on the 30th day of March, 1872, said Champion was by his said attorneys made a party to the record for said amount. No objection having been filed to this claim, I report in favor of said Champion on $32,026.00 *dollars* of the bills of said bank, $32,026.00.

JOHN W. NEVITT
vs.
THE SAME.
} Claim on bills for $2,600.

John W. Nevitt, by his attorney, A. W. Stone, esq., filed with me his claim for $2,600 on the bills of said bank. On the 18th of March, 1872, he was made a party to the record for said amount by his said attorney. I counted the bills and found the amount correct. I report in favor of said Nevitt on $2,600.00 of the bills of said bank, subject to rulings on objections to Mr. Stone's cases, $2,600.00.

T. J. McNish
vs.
The Same. } Claim on bills for $1,246, for $134. Total for $1,380.

T. J. McNish filed with me his claim on the bills of said bank for $1,246.00 *dollars*, and was made a party to the record. After-
175 wards he filed $131.00 in addition, all of which I counted and found correct. No objection having been filed, I report in favor of said McNish for the aggregate amount of $1,380.00 on the bills of said bank, $1,380.00.

Geo. B. Cumming
vs.
The Same. } Claim on bills for $30,250.

Geo. B. Cumming, by his attorney, W. Grayson Mann, filed his claim with me for $30,250 on the bills of said bank, and on the 30th day of April, 1872, was made a party to the record by his said attorney for that amount. Mr. M. J. O'Donoghue counted these bills for me, and I am satisfied with and accept his count, and find the bills to amount to $30,222.00. No objection having been filed to this claim, I report in favor of Geo. B. Cumming on $30,222.00 in the bills of said bank.

Gartrell & Jackson
vs.
The Same. } $3,000.00, claim for services as attorney in suit by Assignee vs. W. R. Phillips, in Fulton superior court.

On the 30th day of March, A. D. 1872, Henry Jackson, esq., of the law firm of Gartrell & Jackson, of Atlanta, Georgia, filed their claim for services as attorneys against A. N. Wilson, receiver of the Merchants & Planters' Bank, for $3,000.00, and asked to be allowed the same out of the assets in the hands of the receiver. This claim has given me some embarrassment. On the 19th day of February, 1873, Amos T. Akerman, esq., filed on behalf of the creditors represented by the late W'm Dougherty objections to said claim of Gartrell & Jackson on the following grounds, to wit:

176 1st. That the said claim is not chargeable upon the assets of said bank now before the court.

Second. That, if so chargeable, it is excessive in amount.

No testimony has been taken before or produced to me by the parties objecting on either of the grounds taken, and all the evidence I have upon which to make a report upon this claim is the application of Gartrell & Jackson, claimants, and the testimony of Henry Jackson, esq., in behalf of the claim. It appears that, in the first instance, Messrs. Gartrell & Jackson were employed by Messrs. Law, Lovell & Falligant, and that there was no privity of contract between the assignee and them, and it might be asked how can they claim against the funds in hands of assignee; but after the receiver was appointed, and the funds turned over to him, he still retained these gentlemen and assisted them in their work of defense & prosecution. And I find upon examining the records that this court has already passed upon and allowed the fees of Messrs. West & Mann for executing some interrogatories at the instance of Gartrell & Jackson to be used in these cases in Fulton superior court, and ordered the payment of said fees out of the funds in the hands of the receiver. I am of opinion, and so report, that the claim of Gartrell & Jackson is properly chargeable upon the funds in the hands of the receiver, and therefore overrule the first objection made.

The second objection is one of delicacy, and about which it is
177 more difficult to arrive at a just, correct, and proper conclu-

sion. It becomes my duty to report against illegal and exhorbitant charges on the one hand, and, on the other, to give to each claimant his equitable and just dues and rights. I know nothing of the amount of labor performed by Messrs. Gartrell & Jackson in the cases in Fulton sup'r court, except as sworn to by Mr. Jackson and from having examined the record in the cases mentioned. I should here state that I have been informed, and so report, that all of these cases in Fulton superior court have been dismissed, and the parties remitted to this court to set up and establish their respective claims and rights, and hence the services of Gartrell & Jackson are no longer needed there to carry on the litigation. But in the testimony of Mr. Henry Jackson, beginning on the (100) one hundredth page of the testimony taken in this cause, which testimony is filed with this report, he sets up the services performed by his firm and fixes the charges therefor, viz, a retainer of $500 in one suit, and $500 more to be paid at the termination of the litigation, and a retainer of $1,000 in the other suit, and $1,000 more to be paid at the termination of the litigation. These charges he swears are reasonable and just, and says that even a much larger sum would have been reasonable. They have had the trouble of the preparation for the litigation, the procuring of the testimony, &c., which constitutes the bulk of the work to be done in contested suits. The court-room argument forms
but a small part of the labor and work. It is preparing therefor
178 which creates the labor, and while there would have been but little labor in preparing for a plain suit upon either the $33,000 note or the account, yet what I know of the difficulties in regard to the claims of Phillips—Phillips, Giles & Co., and W. R. Phillips & Co.—filed as offsets in those suits, by having to examine and report on them in this cause, induces me to believe that there must have been much labor and work on the part of Gartrell & Jackson, if they properly prosecuted the suits and resisted the offsets. And upon this point I have the positive testimony of Mr. Jackson, on the one hand, that such was the case, and no testimony to rebut it. Section 406 of the new code (441, old) fixes the method of settling attorneys' fees, should we go upon the ground of actual services rendered in the latter part of that section. I have only the testimony of Mr. Jackson, uncontradicted by testimony, that the services rendered were reasonably and justly charged for. Should we take the other, and say that they are entitled to their retainer, we still only have his evidence, and no contradiction, that $3,000 would be reasonable and just, and by this rule they would be entitled to $1,500. Mr. Jackson having sworn to his claim, and testified to the value of the services of Gartrell & Jackson in that connection, and there being before me no contradictory proof, I report in favor of Gartrell & Jackson for $1,500. I report for this amount instead of the $3,000 on the ground that the cases were not carried to a final determination in that court, but dismissed, after
179 preparation, to be adjudicated and determined here. I therefore report in favor of their retaining-fees. As I am also required to report upon priorities, I am of opinion that this amount should be paid to Gartrell & Jackson before the funds in the hands of the receiver are distributed among other creditors. I think it should come in as a part of the expenses of administering the trusts by the receiver. My observation is that such is customary, and I think it right.

HARVEY TERRY *vs.* THE SAME. } Claim on judgment on bills for $37,729.86, with interest from April 29, 1870.

Harvey Terry is the original complainant in this bill against the Mer-

chants and Planters' Bank, and has obtained in the court a decree in said cause in his favor for $37,729.86, and an execution has issued on said decree for that amount, and is filed with me in this cause to report on. Mr. Terry, on the 9th of November, 1872, by a notice from Columbia, S. C., of that date, served notice on me that he had such decree, and "asked and required" that I report on the priority of said decree over all other claimants of the fund now in court for distribution, and insisted that by virtue of said decree he had a prior lien over all other creditors; which notice I have filed with the record in this cause. This decree was obtained April 29th, 1870, long after the assignment made by the bank. Such being the case, the decree did not in my opinion obtain any lien in any way, shape, or form upon either the property or money in the
180 hands of the receiver. Had the judgment been obtained before the assignment was made, and the bank had at the time it was so obtained been in possession or owned real or personal property subject to the attachment of liens, the case would have been differ. nt. Judgments obtained after assignment made do not obtain any lien or right of priority in the distribution of assets in the hands of assignee or receiver. I am therefore compelled to overrule Mr. Terry's notice and disregard it entirely, and report in favor of Mr. Terry, without any priority, upon his decree, for ($37,729.86) thirty-seven thousand seven hundred and twenty-nine dollars and eighty-six cents, principal debt, with interest thereon from April 29th, 1870—principal debt, $37,729.86; interest from 29th April, 1870—and that he shall share pro rata with other creditors to whom no preference or priority is given.

HARVEY TERRY *vs.* THE SAME. } Claim on bills for $10,010.00; for 3,220.00; for $258; for $86, & for $203. April 19, 1873.

In addition to the decree just reported on in favor of Harvey Terry, esq., he has filed with me his claims at different times on bills of the bank for the following amounts: (1st,) $10,010.00; (2nd,) $3,220.00; (3rd,) $258; (4th,) $86; (5th,) $203. The first lot was counted by Isaac Beckett, esq., under order of the court, and I have accepted his count. The other lots or packages of bills I verified by count, and found
181 the same to be correct. No objection having been filed to these claims, I report in favor of said Harvey Terry, upon all of them, amounting in the aggregate to ($13,777) thirty thousand seven hundred and seventy-seven dollars, and that he allowed to receive his pro rata upon that amount of bills less $5,659.35, paid by Mr. A. W. Stone to said Terry from collections from stockholders. (See affidavit of Mr. Stone to testimony.

HARVEY TERRY *vs.* THE SAME. } Claim for amount paid for counting bills, advanced costs, &c.

Mr. Terry, the complainant, has also presented to me some bills or receipts for money paid out by him, and asks to have that amount refunded to him. The first one is a bill for $25, paid to the late Edward J. Harden for counting, under the order of this court, the $37,729.60 bills upon which said Terry's decree is based and founded. The receipt is not signed by Mr. Harden, and there is no proof that the amount was paid, though I am convinced it was paid as stated. The question is, can this amount be paid back to Mr. Terry out of the funds in the hands

of the receiver, and has it any priority of payment. Upon examining the records, I find that on December 14th, 1870, this court, his honor Judge Erskine presiding, passed an order for the payment of the fees of E. J. Harden, esq., for counting the bills of said Terry, for which services the amount here set up purports to have been paid. After
182 stating the facts in the case, the order is in these words: "It is therefore ordered by the court that for such services rendered as aforesaid said Terry do pay said Harden the sum of fifty, ($50,) and that said sum be taxed against said Terry as special costs herein." I remember very distinctly that the late W'm Dougherty objected at the time to the fund in hands of receiver being taxed with the fees and costs of Judge Harden for said services, and the court would not then grant the order subjecting said funds to the payment of this claim. And it seems to have been the intention of this court, in passing the order referred to above, that Mr. Terry should pay the costs or fees of Judge Harden himself, as the amount was to be taxed as special costs against Terry himself. I consider that I am bound by that order, which is of file in this cause, and the matter seems there to have been adversely decided to Mr. Terry's claim. I therefore report against the allowance to Mr. Terry of the $25 alleged to have been paid to Judge Harden.

The second claim of Mr. Terry is for $6.05, alleged to have been paid by A. W. Stone, the solicitor of Mr. Terry, to R. U. White, clerk of the superior court of Chatham County, for a certified copy of deed of assignment and schedules of the Merchants & Planters' Bank. There is no evidence before me to show how or in what way this sum becomes a legal or equitable charge against the assets in the hands of the receiver. I therefore report against its being allowed.

183 The third claim of Mr. Terry is twenty (20) dollars, paid to James McPherson, esq., clerk of U. S. courts, southern district of Georgia, as advanced costs on a/c of clerk and marshal in this cause. The receipt of said McPherson has been filed with me by Mr. Terry for that amount. I think the said sum of $20 so advanced should be paid back to Mr. Terry before the general and pro-rata distribution among creditors, and therefore report accordingly. In fact, I think, and so report, that the entire court-costs in this cause should be paid first before any distribution pro rata among the creditors.

I will now report upon the claims to which objections have been filed by Joseph S. Wright; and as the same objections are to filed to all, or nearly all of the claims represented by A. W. Stone, esq., and the late W. Dougherty, I will state them all together, and dispose of the objections at one time.

ADOLPH ABRAHAM *vs.* THE SAME.	Claim for $2,920 on bills. Reported on in favor.
ANDREW T. ANDERSON *vs.* SAME.	Claim on bills for $763.00. Reported on its favor.
JOHN W. NEVITT *vs.* THE SAME.	Claim on bills for $2,600.00.
184 GEO. W. SCOTT *vs.* THE SAME.	Claim on bills for $37,577.00.

HUGH D. COTHRAN, ASSIGNEE, *vs.* THE SAME. } Claim on bills for $750.00.

GEO. W. HATCH *vs.* THE SAME. } Claim on bills, $72,555.00.

THE SOUTHERN EXPRESS CO. *vs.* THE SAME. } Claim on bills for $5,692.

W'M DOUGHERTY *vs.* THE SAME. } Claim on bills for $5,449.00.

FREDERICK R. SCOTT *vs.* THE SAME. } Claim on bills for $15,000.

MILES G. DOBBINS *vs.* THE SAME. } Claim on bills for $67,700.

MICHAEL BLOOMFIELD *vs.* THE SAME. } Claim on bills for $400.

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A. W. STONE *vs.* THE SAME. } Claim on bills for $2,500.

T. B. SAMPLE *vs.* THE SAME. } Claim on bills for $324.

HENRY D. WEED *vs.* THE SAME. } Claim on bills for $10,000.00.

W'M & R. J. LOWERY *vs.* THE SAME. } Claim on bills for $4,004.00.

W. N. MARSH *vs.* THE SAME. } Claim on judgment on bills. Principal $50,000.00; interest to judgment, 2,527.33; damages, 5,000.00; int. from judgment to date.

FRISBEE & ROBERTS *vs.* vs. THE SAME. } Claim on judgment on bills. Principal, $30,032.00; interest to judgment, 8,781.37; int. from judgment, ; damages, 3,003.20; costs, 100.75.

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HUGH MCRAE *vs.* THE SAME. } Claim on judgment on bills. Principal, $2,511.00; int. from Oct. 16, 1868, ; costs of suit, 94.00.

SCOTT, ZEREGA & Co. *vs.* THE SAME. } Claim on judgment on bills. Principal, $62.516.00; int. to judgm't, 2,917.45; damages, 6,251.60; costs, 105.50; interest from judgment.

JOHN YOUNG *vs.* THE SAME. } Claim on judgment on bills. Principal, $92,000.00; interest to judgment, ; interest from judgment, ; damages, ; costs, .

GEO. W. HATCH *v. vs.* THE SAME. } Claim on judgment on bills. Principal, $50,000.00; int. to judgm't, $3,031.73; int. from judgment' ; damages, 5,000.00; costs, 66.50.

L. H. B. SCOTT *vs.* THE SAME. } Claim on judgment on bills. Principal, $109,171.00; int. to Nov. 27, 1867, 633.36; damages, 10,917.00.

187 GEO. W. HATCH *vs.* THE SAME. }

Claim on judgment on bills, principal, $20,000.00; int. to judgment, 1,068.66; int. from judgment, ; damages, 4,876.67; costs, 66.50.

GEO. W. HATCH *vs.* THE SAME. }

Claim on the same judgment as the one above, one being filed by Mr. Dougherty, & this one being filed by Mr. Stone; hence this one is out.

To each of these last claims mentioned, Joseph S. Wright, of Philadelphia, a claimant on bills for a share of the funds in the hands of the receiver, on the 27th of May, 1873, filed with me exceptions as follows, to wit:

"Joseph S. Wright, one of the persons made parties plaintiff in the above-stated case, appears and objects to the filing of the claims of the following-named persons, and to allowance thereon out of the funds in the hands of the receiver in this cause:

"W. N. Marsh, Frisbee & Roberts, Scott, Zerega & Co., Geo. W. Hatch, L. H. B. Scott, John Young, Miles S. Dobbins, Hugh McRae, Geo. W. Scott, Frederick R. Scott, W. R. Phillips & Co., or Phillips, Giles & Co., and all other parties hereto who have brought suits in another court, or in any other cause, on the bank-notes filed in proof of his or their claim herein for the following reasons:

"1st. Because the bank-notes or bills of aforesaid claimants are
188 the vouchers and foundations of suits at common law, and judgments had thereon in another court of a different jurisdiction and practice, and that large sums of money have been allowed on such bank-notes as damages thereon, and such damages *has* been included in and with and made a part of said judgment for the benefit and profit of said bank-notes and the owners thereof.

"2nd. Because the claimants aforesaid are pursuing another fund separate and distinct from the fund in court in this cause, and that large sums of money have been paid and compromises had on the judgments

and claims of said claimants, and that credits thereon is or ought to be made in accordance therewith.

"3rd. Because the payments made on said judgments do not represent the pro rata per cent. paid on the bank-notes of said claimants in this cause; because when the owner may have received sufficient moneys on said judgments to pay said bank-notes in full, with interest thereon, yet the judgment on which these same bank-notes *is* founded remains only partially discharged, and the balance accrues for the benefit of the claimants aforesaid, whose notes are therefore not in like condition with the bank-notes filed by the complainant in this cause in the original suit by Harvey Terry.

"4th. Because the bank-notes of the parties aforesaid offered in claim in this cause have already been partially paid, and that no
189 *no* other or further payment should be made thereon from the fund in this cause until all other bank-notes filed in this cause shall have received a like amount pro rata payment thereon.

"Philadelphia, May 20, 1872."

I think I have copied the objections "verbatim et literatim" as made by Mr. Wright, and have stated the cases to which the objections were intended to apply by said Wright as I understand it. I shall take the objections up in the order in which they have been made.

In regard to the first objection I cannot see that it makes any difference whether the claimants named and specified as covered by the objections have filed suits in other courts of different jurisdiction and practice and obtained judgments thereon or not; such certainly does not kill and invalidate the claims of these parties against the bank. The statute gave them the right to sue on the common-law side of the court if they thought best, and also in certain events gave them damages and interest. They have exercised in some of the instances mentioned this right, brought suit, obtained judgment on their bills against the bank at common law, and included in their judgments damages and interest, as they had a right to do. The party objecting could have done the same if he had so desired. These parties have not only not invalidated their claims against the bank, but have given the higher sanction of the verdict
190 of a jury and the judgment of a court. I do not see the object of the objection is made, nor do I see any point to it. I therefore overrule the first objection as made by Mr. Joseph S. Wright.

As to the second objection made, or rather to the first part thereof, I cannot see how the parties to whose claims Mr. Wright objects can be barred or deprived of their rights in this cause because some of them have seen fit to be diligent and pursue their legal rights and resort to their legal remedies. Because they have pursued a fund separate and distinct from the fund in court their claims are not thereby barred; because they have seen fit to sue stockholders for their unpaid stock it cannot be said that they have lost their rights against the property of the bank itself. There is no case of election here, where they should be compelled to go against one fund instead of another. The party objecting was entitled to the same rights and the same remedies. He could have sued the stockholders also. He can do so now if not barred by the limitation laws, and if he is, it is his own fault; he cannot blame any one but himself. The law authorized these creditors to pursue the assets of the bank, to gather up and subject the unpaid stock, &c. They could use all the remedies in pursuit of their rights, and they could go on the one side of the court or the other, according to the nature of their action and as their interest required. Hence I do not see any
191 point in the first part of the second objection, in regard to pur-

suing separate and distinct funds; but there is some point, in my opinion, to the statement made in the latter part of that objection, that large sums of money had been paid on the claims of these claimants, and that credits ought to be allowed. These claimants have filed with me their claims in full, without any credits being placed thereon. At the instance of Harvey Terry, esq., and his attorney, Hon. D. T. Corbin, I have examined quite a number of witnesses to find out the settlements made by the stockholders, or some of them, with Messrs. Stone & Dougherty, for the clients represented by them, and also to find out the amounts paid. Under an agreement made between said Corbin and Col. Stone in my presence, acting as master in this cause, said Stone was to send back from New York, in May or June last, a statement of all collections made by himself and Col. Dougherty from the stockholders of the Merchants & Planters' Bank. That statement was sent me, and all of the witnesses sworn and examined corroborate, so far as their connection and actions were concerned, the correctness of the payments made by themselves. In addition to the collections made by Messrs. Dougherty and Stone, Mr. A. T. Akerman, in his testimony, page 83 of the testimony taken in this cause, swears that he collected ($3,342.00) on account of the claims then represented by him, but formerly by Mr. Dough-
191½ erty, against said bank. Mr. Connerat testifies to having paid Col. Dougherty on the 15th day of April, 1872, $125—one hundred and twenty-five dollars—in addition to the amount formerly paid Dougherty & Stone, viz, $1,000; making in all $1,125 paid by Connerat. (See Connerat's evidence, page 24 of the testimony taken in this cause.)

Under the statement furnished by A. W. Stone, esq., already referred, a copy of which I give below, the original being filed with the evidence in this cause, we have as follows:

Collections from stockholders of Merchants & Planters' Bank to 1st May, 1873:

1871.	April.	W'm P. R. McIntire		$6,000
		Estate W. G. Foote		1,500
	May 30.	Henry D. Weed		2,500
	"	George Cornwell		500
		Estate of W. H. Dunning		2,000
		George B. Cumming		25,000
		W'm M. Rogers		2,500
	31.	Noah B. Knapp		5,000
		Nevitt, Lathrop & Rogers		1,000
		John W. Nevitt		2,500
		Edward Lovell		3,550
		Tho's F. Screven		8,350
		Miss Mary Telfair		3,325
	June 1.	Robert Stafford		25,000
		Henry Lathrop		2,500
	2.	W'm W. Lincoln		1,250
		John Screven		8,300
	3.	Robert Habersham & Son		6,750
192	June 3.	W. & R. McIntire, notes 1 & 2 years, $1,000 each	2,000	
		Less in't 1 per cent. per month	320	1,680
		Geo. S. Nichols		2,000
		H. Scudder		1,000
		John J. Kelly		1,250
		J. V. Connerat		1,000

1872. Jan'y 20.	Estate of E. Molyneux	75,000
	Estate of J. W. Morrell, 5,000 less 250	4,750
	Total	$194,205
	Add collected by Mr. Akerman.....	3,342
	" extra collection from Connerat by Dougherty	125
	And we have total collections of.....	$197,672

It will be thus seen that the entire collections made by Messrs. Stone and Dougherty and by Mr. Akerman for their clients amount in the aggregate to one hundred and ninety-seven thousand six hundred and seventy-two dollars. This money was raised on the suit against stockholders on account of their unpaid stock, and no testimony has been produced to me to show how or to whom it was distributed; whether simply to those in whose favor the judgments were obtained against stockholders, or to the clients represented by said attorneys, Dougherty and Stone, generally, in proportion to the amounts of their respective claims. Such being the case, it will be seen at once that I cannot tell how much each respective claim represented by these attorneys, should be reduced, and what amount thereof should be allowed to share in
193 the distribution of the assets; nor do I see that it matters any to those creditors not represented by Messrs. Stone & Dougherty, so far as the distribution of the assets are concerned, how they distributed their collections among their clients, so long as the claims represented by said attorneys are reduced by the amount of the collections made by them. The claims represented by Messrs. Stone & Dougherty formerly, and now by Messrs. Stone & Akerman, have been paid to the extent of one hundred and ninety-seven thousand six hundred and seventy-two dollars ($197,672) by the collections made by the stockholders. My opinion, then, is that Messrs. Stone & Akerman must give credit on the claims represented by them against the fund for $197,672 before they can share in the assets. To illustrate what I mean, take following: If Messrs. Stone & Akerman had bills or judgments thereon against the bank for $600,000, and they had collected from the stockholders on account of their unpaid stock $200,000. and the bank had assets to distribute as in this case, then they could not come in and claim on $600,000, but only on $400,000, the balance of their claim after deducting the payments rec'd. So in the case here I see no reason why the clients of Messrs. Stone and Dougherty should be entirely deprived from sharing in the assets of the bank. I therefore sustain the latter portion of the second objection to this extent, viz, that Messrs. Stone & Dough-
194 erty (or at present Mr. Akerman) must, before sharing in the distribution of the assets of the bank in the hands of the receiver, reduce the aggregate amount of their claims by the sum of one hundred and ninety-seven thousand six hundred and seventy-two dollars, ($197,672,) this being the amount received by them from the stockholders, and that on the aggregate balance of said claims, after said deduction, they can share in said distribution. At the end of the consideration of these objections I will attach the calculations and deductions as I find they should be made.

As to the third objection raised by Mr. Wright, I do not exactly understand what he means, nor do I see any point to it. I therefore overrule it, except to the extent as covered by my ruling on the second objection.

As to the fourth objection of Mr. Wright, I have ruled upon the partial payments alleged to have been made on the claims represented by Messrs. Akerman & Stone, and stated to what extent in my opinion they affected the rights of their clients and the legal effect thereof. But Mr. Wright goes farther in this objection, and says the clients of these attorneys should not be allowed any share in the distribution of the assets of the bank in the hands of the receiver until all other bank-notes filed in this cause shall have rec'd a pro-rata payment thereon. If Messrs. Stone & Akerman had received their payments and sums mentioned out of the assets of bank in the hands of the receiver
195 this objection would be well founded. But they did not receive the $197,672 from that source, but upon suits against the stockholders. I do not see that they have, by pursuing their remedies against the stockholders and collecting this money, damaged Mr. Wright or the other bill-holders in any way. On the contrary, they have benefitted him thereby by reducing their claim upon the assets of the bank, and thereby enlarging the pro rata to be paid to Mr. Wright and others in a like situation. But, says Mr. Wright, their clients get more money than I do; they get from stockholders and from the assets too. Grant it. It originates from their diligence in enforcing their rights. Mr. Wright could have done the same had he seen fit to do so. Nor do I think it any of Mr. Wright's business as to how said Stone & Akerman (or Dougherty) distributed the money received by them from the stockholders so long as they truthfully acknowledge, set up, and show the amounts collected by them. It might be of some interest to the clients of Messrs. Stone & Dougherty, and if they paid money to some of their clients who were merely bill-holders, and not judgment-creditors, against the bank and stockholders, if the money was raised on the judgment, both the judgment-creditors, upon whose claim the money was raised, and the stockholders paying, might raise objections to bill-holders merely sharing in the fund so raised. But Mr. Wright is in neither
196 of these categories, and in fact I do not see that either question originates or properly can originate in the cause referred to me. I am, therefore, under my view of the matter, forced to overrule the fourth objection of Mr. Wright to these claims.

I will now report upon the amounts of the claims of the parties covered by the objections of Mr. Wright; and before doing so I should here state that the claim of Frederick R. Scott objected to was not represented either by Mr. Dougherty or Mr. Stone, and no amount of money has been received or paid thereon, but that his claim is represented by Messrs. Hartridge & Chisholm, and I have reported in favor of its payment pro rata in another and former portion of this report. I have been somewhat troubled in regard to the proper report to make upon those claims of Messrs. Stone & Akerman based on the bills of the bank, but sued to judgment and interest and damages recovered. Whether I should report upon the face of their claims exclusive of interest and damages (the judgments having been obtained after the assignment) or upon the whole, principal, interest, and damages, has given the trouble. I have come to the conclusion that those creditors who obtained the judgments are entitled to their pro rata upon the principal, interest, and damages. We then have the clients represented by Mr. Stone and Mr. Dougherty, (formerly,) now by Mr. Akerman, as follows, to wit:

Andrew T. Anderson, claim on bills for.....	$763 00
Adolph Abraham, " " " "	$2,920 00
197 John W. Nevitt, claim on bills for.....	$2,600 00

Geo. W. Scott,	" " " "	$37,577 00
H. D. Cothran, assignee,	" " " "	$750 00
Geo. W. Hatch,	" " " "	$72,555 00
The Southern Express Co.,	" " " "	$5,692 00
W'm Dougherty,	" " " "	$5,449 00
Miles G. Dobbins,	" " " "	$67,700 00
Michael Bloomfield,	" " " "	$400 00
A. W. Stone,	" " " "	$2,500 00
T. B. Sample,	" " " "	$324 00
H. D. Weed,	" " " "	$10,000 00
W'm M. & R. J. Lowery,	" " " "	$4,004 00
John Stevenson,	" " " "	$482 00
W. N. Marsh, judgment on bills, principal		$50,000 00
interest to judgment		$
damages		$
interest from jud. to date		$
Frisbee & Roberts, judgments on bills, principal		$30,032 00
interest from March 6, 1867, to date...		$
damages		$3,003 20
Hugh McRae, judgment on bills, principal		$2,511 00
interest from October 16, 1868		$
Scott, Zerega & Co., judgment on bills, principal		$62,516 00
int. from March 6, '67, to Nov. 26, '67		$2,917 45
damages		$6,251 60
interest from Nov. 26, '67, to date....		$
John Young, judgment on bills, principal		$92,000 00
interest from April 30, 1870		$
Geo. W. Hatch, judgment on bills, principal		$50,000 00
int. from Jan'y 8, '67, to Nov. 26, '67.....		$3,081 94
damages		5,000 00
int. from Nov. 26, '67, to date.....		$
198 Levi H. B. Scott, judgment on bills, principal.....		$109,171 00
interest to Nov. 27, 1867.....		$636 36
damages		$10,917 00
interest from Nov. 27, '67, to date,		$
George W. Hatch, judgment on bills, principal.....		$20,000 00
int. from Feb'y 21, '67, to Nov. 25, '67..		$1,068 66
damages.....		2,000 00
int. from Nov. 25, '67, to date.....		

The above list shows the claims of Messrs. Stone and Akerman, (formerly Mr. Dougherty,) as set up in their applications. I have examined the judgments and have attached to my report memorandums of the judgments and suits in the various State courts. I have also calculated the interest to Nov. 17, 1873, the date of the meeting of the court. In some of their claims, setting up bills, I have found the amount under and in others over. I have reported in favor of the count as made, and not upon the petition. I therefore report upon the claims of the said clients of Messrs. Stone & Dougherty (Akerman) as follows, to wit:

Andrew T. Anderson, claim on bills for		$763 00
Adolph Abraham,	" " " "	$2,920 00
John W. Nevitt,	" " " "	2,600 00
Geo. W. Scott,	" " " "	37,577 00
H. D. Cothran, assignee,	" " " "	750 00
Geo. W. Hatch,	" " " "	72,237 00

The Southern Express Co. " " " "		5,692 00
W. Dougherty, " " " "		5,098 00
Miles G. Dobbins, " " " "		67,700 00
Michael Bloomfield, " " " "		400 00
199 A. W. Stone " " " "		$2,592 00
T. B. Sample, " " " "		324 00
H. D. Weed, " " " "		10,000 00
W'm M. & R. J. Lowery, " " " "		4,004 00
John Stevenson, " " " "		482 00
W. N. Marsh, judgment on bills, principal		$50,000 00
interest to judgment, Nov. 26, 1867		$2,527 33
interest from Nov. 26, '67, to Nov. 17, '73		$20,912 38
damages		$5,000 00
Frisbee & Roberts, judgment on bills, principal		$30,032 00
int. from March 6, '67, to Nov. 17, '73		$14,078 98
damages		$3,003 20
Hugh McRae, judgment on bills, principal		$2,511 00
int. from Oct, 16, 1868, to Nov. 17, '73		$893 49
Scott, Zerega & Co., judgment on bills, principal		$62 516 00
int. from March 6, 1867, to Nov. 26, 1867		$2,917 45
int. from Nov. 26, 1867, to Nov. 17, 1873		$26,137 23
damages		$6,251 60
Carried forward		$439,919 66
John Young, judgment on bills, principal		$92,000 00
int. from April 30, 1870, to Nov. 17, 1873		$23,383 31
L. H. B. Scott, judgment on bills, principal		$109,171 00
int. to Nov. 26, 1867		$636 36
int. from Nov. 26, 1867, to Nov. 17, 1873		$45,660 81
damages		$10,917 00
Geo. W. Hatch, judgment on bills, principal		$50,000 00
int. from Jan'y 8, 1867, to Nov. 26, 1867		$3,081 94
int. from Nov. 26, 1867, to Nov. 17, 1873		$20,912 38
damages		$5,000 00
200 Geo. W. Hatch, judgment on bills, principal		$20,000 00
inte. from Feb'y 21, 1867, to Nov. 26, 1867		$1,068 66
int. from Nov. 26, 1867, to Nov. 17th, 1873		$3,364 74
damages		$2,000 00
Making a total of		$832,115 76

This gives the aggregate amount of the claims as represented formerly by Messrs. Dougherty & Stone, and now by Messrs. Akerman & Stone. I therefore report in favor of the clients represented by said Akerman & Stone hereinabove specifically set out for their pro rata on $832,115 76
Less collections made by them of $197,672 00

Leaving in the aggregate $634,443 76

Upon this last-mentioned sum I am of opinion they are entitled to receive their pro-rata dividend from the assets in the hands of the receiver for distribution, and so report.

W'm R. Phillips & Co.
vs.
The Merchants & Planters' Bank.

Claim on bills for $42,497.00.
Filed March 30th, 1872.

WM R. PHILLIPS & CO. *vs.* THE SAME.	Claim for $20,882.65, on account of collateral securities deposited with bank.
PHILLIPS, GILES & CO. *vs.* THE SAME.	Claim for $44,097.34, on account of collateral securities deposited with bank.

201 On the 30th day of March, A. D. 1872, the above-named parties filed their applications to be made parties to this bill, and set up their claims as above specified, and they ask to be allowed to share in the distribution of the assets of the bank. Mr. Joseph S. Wright has filed objections to these claims, the objections being the same as those filed to the claims of Messrs. Stone & Dougherty, which I have heretofore passed upon in this report, and it is useless to repeat the ruling here.

On the 23rd day of May, 1873, Mr. A. W. Stone, solicitor for Geo. W. Hatch, W. N. Marsh, Levi H. B. Scott, Frisbee & Roberts, Scott, Zerega & Co., John Young, et al., filed with me the following objections to this claim, viz:

"1st. Because the action, if any, arose prior to the first day of June, A. D. 1865, and no suit at law or in equity was commenced thereon on or before the first day of January, 1870, as required by a statute of the State of Georgia, in such case made and provided.

"2. Because the said claimants were and still are indebted to the said bank in a sum larger or at least equal to their claims against said bank.

"3rd. Because the said claims, except the said bills of said bank, were received in what was known as confederate treasury note' or confederate money, of very little or no value at the time received.

"4th. Because said claims have been fully paid of' and discharged before the assignment made by said bank."

As to the first objection, I overrule it. In testimony of Phil-
202 lips, begg'ing on page 116 of *of* the testimony taken in this cause by me, shows that suits were begun on these claims prior to January 1, 1870. In fact I have the record of the suits in Atlanta by A. N. Wilson vs. these parties, with their pleas of offset, &c., filed Dec. 31, 1869, now before me, and I have carefully examined the record and testimony taken in those suits for Fulton superior court. These parties filed suits also in Chatham superior court, which I find were dismissed March 8, 1873, for want of prosecution.

(1st objection overruled.)

As to the 3rd objection made, I will state that there is no evidence before me showing in what kind of currency the collections on the collaterals were made in; nor do I think it material under my view in this cause. It is not shown to me, save by the admissions of Phillips, that any of the collections were in confederate money, (see his testimony, page 116 testimony,) nor how or in what manner the bank treated such collections, if so made. No evidence being introduced on this point by parties filing objections, I overrule the 3rd objection, subject to the modifications hereinafter made.

2nd objection. As to this objection I have to report that no evidence has been introduced by parties objecting on this point; and, in fact, none by any one except Phillips himself, who, by his testimony, rebuts the statement of fact set up in this objection, (see Phillips' testimony beginning page 116 of testimony taken by me in this cause.)
203 Such being the case, I am forced to overrule this objection for want of proof to sustain it.

4th objection. For the same reason I overruled the second objection I also overrule objection No. 4, and report upon these cases as follows:

On the 21st day of July, 1861, the firm of W. R. Phillips & Co. made their promissory note for $33,000.00, payable six months after date, and Phillips, Giles & Co. endorsed the same. Said note was due to, and belonged to, the Merchants & Planters' Bank. W. R. Phillips & Co. claim that their firm deposited with the bank as collateral security to said note other good and solvent notes to the amount on other parties, to the amount of $35,055.85, and that the collections on these claims were to be made by the bank, and the proceeds thereof appropriated as payment on the said note of $33,000.00. They further claim that on the 23rd of February, 1863, they remitted to the bank $4,326.80, and Aug. 3d, 1863, the further sum of seven thousand dollars; each of said payments last mentioned to be entered as credits on their note if it had not previously been paid by collections from the collaterals. W. R. Phillips & Co. also claim that W. R. Phillips was the agent of said bank, at Griffin, during the years 1859, 1860, & 1861, at a salary of $2,500 per annum, which has never been paid him; and claims that W. R. Phillips & Co. should have credit for that amount also, viz, $7,500.00. Phillips claims that while he rendered the services as an individual, still it was
204 agreed between the bank and W. R. Phillips & Co. that the services should be credited to W. R. Phillips & Co. And said Phillips & Co. claim that after paying the $33,000 note out of these collaterals deposited by W. R. Phillips & Co., and the other items mentioned, the bank was and is indebted to W. R. Phillips & Co. in the sum of $20,882.65, besides interest, and exclusive of the claim of Phillips, Giles & Co.; and W. R. Phillips & Co. ask to be allowed this, with interest, from the fund in the hands of the receiver. W. R. Phillips & Co. claim that all of the notes deposited by them, save one, was collected by the bank.

In regard to the claim of Phillips, Giles & Co., they claim that they deposited with the bank, being endorsers on said $33,000 note, notes of other parties amounting to $37,647.34, as collateral security, to secure the payment of said $33,000.00 note, all of which, they allege, was collected by the said bank. And Mr. Phillips supports this, to some extent, by his testimony. They also claim that the bank had 43 bales of cotton belonging to Phillips, Giles & Co., which the bank sold, and it is claimed that the same was worth $6,450.00, together with interest thereon from August 1st, 1865, making, in the aggregate, $44,097.34, and they say that the bank is indebted to them in this sum, together with interest thereon. These claims of Phillips & Co. and Phillips, Giles & Co. last mentioned are not based upon bills of the bank, but upon
205 alleged collection by the bank of collaterals belonging to them over and above the amount necessary to pay the note in question. The bank, in making its assignment to Hiram Roberts, esq., made it in trust to pay all the moneys so to be "received by him to the creditors of said bank rateably and in equal proportions, according to their several and respective legal priorities" under the law. It will thus be seen that the bank, in making its assignment, did not change or intend to change the mode of distribution pointed out by law in cases of insolvent banks. The new code of Georgia, sect. 1487, provides that billholders in such cases shall be paid before other creditors. In 40 Ga., 391, Belcher vs. Willcox, the supreme court of Georgia decide the same thing, and reject the claim of a judgment-creditor, who was not a billholder, in the distribution of the assets of the bank then in question. From the testimony of Phillips, taken in these cases, I am satisfied the note of

$33,000.00, made by W. R. Phillips & Co., and endorsed by Phillips, Giles & Co., has been paid off. I have examined carefully, in looking into this point, the testimony of Phillips, and also the testimony of A. N. Wilson, C. W. Bruen, and Hiram Roberts, taken for use in the suit of A. N. Wilson, receiver, vs. Phillips & Co., in Fulton superior court. Taking Phillips' testimony, beginning at page 116 of the testimony, it would seem that the bank is indebted to Phillips & Co. and Phil-
206 lips, Giles & Co. in considerable sums, but it does not become necessary for me in this case to investigate what those sums are. As the billholders are preferred creditors under the law to other creditors, and as the assets of bank in the hands of the receiver are not by any means sufficient to pay the billholders who have presented their claims in this cause, these claims of Phillips, Giles & Co. for $44,097.34, and of W'm R. Phillips & Co. for $20,882.65, cannot, under the law controlling, share in the distribution of the assets of the bank, even admitting the validity and correctness of their claims, and that the bank owed them what they claim. But on that point I do not pretend to report, as it is entirely unnecessary for the purposes of the reference to me. If these claims are valid and legal claims against the bank, Phillips, Giles & Co. and W. R. Phillips & Co. can pursue other funds, and resort to other remedies, but they cannot claim any share of the assets, they not being sufficient to satisfy the demands of the billholders, who have a priority under the law over all other creditors. Such being the case, I report against the allowance of said claim of W. R. Phillips & Co. for $20,882.65, or any portion thereof, out of the assets in the hands of the receiver; also against the allowance of the said claim of Phillips, Giles & Co. for $44,097.34, or any part thereof, out of the fund in receiver's hands. For these reasons, as stated above, I reject these two claims as not entitled to any portion of the funds in question.

207 As to the claim of W. R. Phillips & Co. on $42,497 of the bills of said bank, filed, as stated, March 30, 1872, as appears by the record in this cause, I report that I counted these bills, and found that they amounted, according to my count, to $42,431.00. In Mr. Phillips' testimony (page 118 of the testimony) he swears that, on the 22d day of March, 1866, he demanded payment on these bills from Hiram Roberts, esq., president of the bank, and was refused payment. He therefore asks not only their pro rata on the bills, but also on interest thereon from that date and the damages allowed by law. Section 1481, new code of Georgia, prescribes the penalty on the part of the bank for the failure on its part to "pay specie for any of its bills when due and demanded by the holder," and says for such refusal "the bank shall pay, besides the legal interest, twenty-five per cent. damages, each of which must be specified in the judgment, and the execution thereon shall be collected in specie." The law authorizes the penalty under the circumstances stated, but it seems from the wording of the statute that it does not become fixed and collectible until sued for and a verdict obtained. Mr. Phillips has a suit in court, or did have, to establish these facts, and I am unable to say what the verdict would be upon the trial thereof. The demand might be denied, and the decision adverse to Phillips & Co. I do not think it was the intention of the law, in cases like Messrs. Phillips & Co., to allow them to realize on the interest and damages.

208 I therefore report in favor of W'm R. Phillips & Co. for their pro-rata share on the bank-bills presented by them, viz, $42,431.00.

In regard to the claim of the receiver, A. N. Wilson, esq., for his services in administering the trust, I report that he has not filed with me, but merely made verbal statements in regard to it, and informs me that

he cannot now present the same in full, because he is not through with the administration of the trust confided to him. I cannot, therefore, report on the amount due him, but report that whatever is allowed shall be first paid as expenses towards administering said trust, and that it take priority over other claims, except those reported as in the same category.

I will also state that I have filed the testimony separate from this report, as it would be too bulky and inconvenient if both were filed together. I have alphabetically indexed each, and the report upon the claim of each individual or the testimony of each witness can be easily found by referring to the index.

As I was required to find out the various suits and judgments against the bank & stockholders, I have attached at the end of my report Exhibit A as the result of my examination in that regard, and ask that it be taken as a part of this my report.

Having reported as fully as I am able with the evidence before
209 me upon the claims of the respective parties, I herewith submit respectfully this my report and the bills counted by me, and ask to be discharged from the further consideration hereof.

ANDREW SLOAN, *Master, &c.*

Submitted Nov. 27, 1873.
SAV'H, GEORGIA.

NOTE.—Of course, the distribution is, under this report, to be made pro rata, (except where a preference is given,) in proportion to the amount reported on in favor thereof.

ANDREW SLOAN, *Master, &c.*

210 EXHIBIT A.

Judgments in 5th circuit court of the United States for the southern dist. of Georgia vs. The Merchants & Planters' Bank.

FRISBEE & ROBERTS
vs.
THE MERCHANTS AND PLANTERS' BANK.

Declaration filed March 15, 1867.
Judgment, Nov. 26, 1867.

Principal	$30,032 00
Int. from March 6, '67.	
Damages	3,003 20
Costs	99 55

(Vide page 23, judgment docket.)

SCOTT, ZEREGA & CO.
vs.
THE MERCHANTS AND PLANTERS' BANK.

Dec. filed March 15, 1867.
Judg., Nov. 26, 1867.

Principal	$62,516 00
Int. from March 6, '67, to Nov. 25, '67	2,917 45
Damages	6,251 60
Costs	104 30

(Vide judgment docket, page 23.)

W. N. MARSH
vs.
THE M. & P. BANK.

Dec. filed March 15, 1867.
Judgment, Nov. 26, 1867.

Principal	$50,000 00
Int. from March 6, 1867, to Nov. 26, 1867	2,527 33
Damages	5,000 00
Costs	73 30

(Vide page 23, execution docket.)

GEO. W. HATCH
vs.
THE MERCHANTS & PLANTERS' BANK.

Dec. filed March 15, 1867.
Judgment, Nov. 26, 1867.

Principal	$50,000 00
Int. from Jan. 8, '67, to Nov. 26th, 1867	3,081 94
Damages	5,000 00
Costs	65 30

GEO. W. HATCH
vs.
THE MERCHANTS & PLANTERS' BANK.

Dec. filed March 15, 1867.
Judgment, Nov. 26, 1867.

Principal	$20,000 00
Int. from Feb'y 21st, '67, to Nov. 25th, '67	1,068 66
Damages	2,000 00
Costs of suit	55 30

211 LEVI H. B. SCOTT
vs.
THE MERCHANTS & PLANTERS' BANK.

Filed Oct. 17th, 1867.
Judgme't, Nov. 29, 1867.

Principal	$109,171 00
Int. from Oct. 17th, to Nov. 27th, 1867	636 36
Damages	10,917 10
Costs	63 76

HUGH MCRAE
vs.
THE MERCHANTS & PLANTERS' BANK.

Filed Oct. 16, 1868.
Judgment, Nov. 17, 1869.

Principal	$2,511 00
Inte. from Oct. 16, 1868.	
Costs of suit	94 22

JOHN YOUNG
vs.
THE SAME.

Dec. filed Dec. 31, 1869.
Judgment, April 30, 1870.

Principal	$92,000 00
Costs of suit	208 00

HARVEY TERRY
vs.
THE SAME.

Bill filed July 12, 1869.
Decree, April 29, 1870.

Principal	$37,729 00
Int. from April 29, 1870.	
Costs of suit	132 86

EXHIBIT.

The following statement shows the list of suits by the billholders of said bank against the bank itself in Chatham superior court:

W. R. Phillips vs. The Bank. Dismissed March 8, 1873.
" " " " " " " " "
Phillips, Giles & Co. vs. The Bank. " " " "
H. D. Cothran, W'm M. & R. J. Lowery.
M. Bloomfield, ex.
Miles G. Dobbins.
Southern Express Co.
W. Dougherty.
Andrew T. Anderson.
} Each of these cases is still pending in Chatham sup'r court.

212 EXHIBIT 1.

Table showing the actions commenced in the United States circuit court for the southern district of Georgia by the billholders of the Merchants & Planters' Bank against the stockholders thereof, under the personal-liability clause of said bank's charter:

	When filed.	Present condition.
Geo. W. Hatch vs. W'm H. Burroughs	Oct. 10, 1868.	Verdict.
Geo. W. Hatch vs. Geo. B. Cumming	" " "	Still pending.
" " " vs. John W. Nevitt	" " "	" "
" " " Hiram Roberts	" " "	" "
" " " H. D. Weed	" " "	" "
" " " M. R. Williamson	" " "	" "
" " " John Cooper	" " "	" "
" " " R. Habersham et al., survivor	" " "	" "
" " " Geo. S. Nichols	" " "	" "
" " " A. M. Ross, adm'r	" " "	" "
" " " W'm Rogers	" " "	" "
" " " Joseph V. Connerat	" " "	" "
" " " M. Cumming, ex	" " "	" "

"	"	"	N. B. Knapp.....	"	"	"	"	"
"	"	"	Anthony Porter.....	"	"	"	"	"
"	"	"	John Screven.....	"	"	"	"	"
"	"	"	Tho's F. Screven.....	"	"	"	"	"
"	"	"	Geo. H. Johnston, adm.	"	"	"	"	"
"	"	"	Mary Telfair.....	"	"	"	"	"
"	"	"	Du Bignon & Bailey...	"	"	"	"	"
"	"	"	W'm McIntire.....	"	"	"	"	"
"	"	"	Robert McIntire.....	"	"	"	"	"
"	"	"	John J. Kelly.....	"	"	"	"	"

213 2ND.

Frisbee & Roberts filed suits against the identical parties above in said court on the same day, which suits are still pending, as above set forth.

3RD.

Zerega, Scott & Co. filed suits, as above set forth, against the same parties on the day mentioned, which are in the same condition, (still pending.)

4TH.

W. N. Marsh filed, October 10th, 1868, suits, similar in every respect, against the above-mentioned parties, which are still pending on the docket.

5TH.

Geo.	W.	Hatch	vs.	W. H. Burroughs....	Filed	Oct.	13,	1868.	Still pending.
"	"	"	"	Geo. W. Cumming..	"	"	"	"	"
"	"	"	"	Geo. Cornwell.....	"	"	"	"	"
"	"	"	"	John Cooper.....	"	"	"	"	"
"	"	"	"	A. M. Ross, adm....	"	"	"	"	"
"	"	"	"	W'm Rogers.....	"	"	"	"	"
"	"	"	"	W. W. Lincoln.....	"	"	"	"	"
"	"	"	"	Joseph V. Connerat.	"	"	"	"	"
"	"	"	"	Noah B. Knapp.....	"	"	"	"	"
"	"	"	"	John Screven.....	"	"	"	"	"
"	"	"	"	Geo. H. Johnston, adm.....	"	"	"	"	"
"	"	"	"	R. J. Davant, jr....	"	"	"	"	"
"	"	"	"	W'm McIntire.....	"	"	"	"	"
"	"	"	"	John J. Kelly.....	"	"	"	"	"
"	"	"	"	Octavus Cohen.....	"	"	"	"	"
"	"	"	"	John M. Geurard...	"	"	"	"	"
"	"	"	"	Ephraim Scudder...	"	"	"	"	"
"	"	"	"	Lucy D. Fawcett, adm	"	"	"	"	"

214 6TH.

Frisbee & Roberts vs. Edward Lovell.....	Oct. 17, 1868.	Pending.
W. N. Marsh vs. " "	"	"	"	"
Zerega & Scott vs. " "	"	"	"	"
Edwin Parsons vs. Ann M. Hardee, adm....	Sept. 20, 1869.	"

Geo. W. Hatch, W. N. Marsh, Frisbee & Roberts, Zerega & Scott,	vs. Robert Stafford....	April 28, 1869.	"

7TH.

L. H. B. Scott	vs.	W. H. Burroughs.....	Oct.	12th,	1869.	Pending.
"	"	√ Geo. Cornwell.....	"	"	"	"
"	"	√ Hiram Roberts.....	"	"	"	"
"	"	√ H. D. Weed	"	"	"	"
"	"	√ W. H. Wiltburger.....	"	"	"	"
"	"	√ John Cooper.....	"	"	"	"
"	"	√ W. W. Lincoln.....	"	"	"	"
"	"	√ Geo. S. Nichols.....	"	"	"	"
"	"	√ W'm Rogers.....	"	"	"	"
"	"	√ A. M. Ross, adm'r	Oct.	14,	1869.	"
"	"	√ Rose & McConaghy	Oct.	15,	1869.	"
"	"	√ Geo. H. Johnston, adm'r.	"	14,	"	"
"	"	√ Noah B. Knapp.....	"	14,	"	"
"	"	√ Anthony Porter.....	"	"	"	"
"	"	√ John Screven.....	"	12,	"	"
"	"	√ W. M. Charters.....	"	12,	"	"
"	"	√ W'm McIntire..... ...	"	"	"	"
"	"	√ John J. Kelly	"	"	"	"
"	"	√ Alfred Haywood.....	"	"	"	"
"	"	√ Robert D. Walker.....	"	"	"	"
"	"	√ Octavus Cohen.....	"	"	"	"
"	"	√ Joseph V. Connerat.....	"	"	"	"

215 8TH.

Geo. W. Hatch	vs.	Murchison & Purse, ex...	Dec.	15,	1869.	Pending.
		W'm M. Charters.....	Dec.	17,	1869.	"
		W. M. Charters..... ...	"	"	"	"
		Alfred Haywood.....	"	18th,	"	"
		Alfred Haywood.....	"	"	"	"
		W'm H. Wiltberger.....	"	"	"	"
		W. H. Wiltberger.....	"	"	"	"
		H. D. Weed, adm'r.....	"	20th,	"	"
		H. D. Weed, adm'r.....	"	"	"	"
		Robert Stafford.....	"	"	"	"
W. N. Marsh	vs.	H. D. Weed, adm'r.....	"	"	"	"
		√ W. H. Charters.....	"	17th,	"	"
		√ Alfred Haywood.....	"	18th,	"	"
		√ W. H. Wiltberger	"	18,	"	"

Zerega & Scott and Frisbee & Roberts filed suits, similar in dates, &c., against the four parties last named.

9TH.

L. H. B. Scott	vs.	Heyward & Heyward....	Dec.	31,	1869.	Pending.
"		√ Robert Stafford.....	"	23,	"	"
"		√ W'm B. Adams.....	"	23,	"	"
"		√ Mary Telfair	March	23,	"	"

"	"	"	N. B. Knapp.....	"	"	"	"	"
"	"	"	Anthony Porter.....	"	"	"	"	"
"	"	"	John Screven.....	"	"	"	"	"
"	"	"	Tho's F. Screven.....	"	"	"	"	"
"	"	"	Geo. H. Johnston, adm.	"	"	"	"	"
"	"	"	Mary Telfair.....	"	"	"	"	"
"	"	"	Du Bignon & Bailey...	"	"	"	"	"
"	"	"	W'm McIntire.....	"	"	"	"	"
"	"	"	Robert McIntire.....	"	"	"	"	"
"	"	"	John J. Kelly.....	"	"	"	"	"

213 2ND.

Frisbee & Roberts filed suits against the identical parties above in said court on the same day, which suits are still pending, as above set forth.

3RD.

Zerega, Scott & Co. filed suits, as above set forth, against the same parties on the day mentioned, which are in the same condition, (still pending.)

4TH.

W. N. Marsh filed, October 10th, 1868, suits, similar in every respect, against the above-mentioned parties, which are still pending on the docket.

5TH.

Geo.	W.	Hatch	vs. W. H. Burroughs....	Filed	Oct.	13,	1868.	Still	pending.
"	"	"	" Geo. W. Cumming..	"	"	"	"	"	"
"	"	"	" Geo. Cornwell.....	"	"	"	"	"	"
"	"	"	" John Cooper.....	"	"	"	"	"	"
"	"	"	" A. M. Ross, adm....	"	"	"	"	"	"
"	"	"	" W'm Rogers.....	"	"	"	"	"	"
"	"	"	" W. W. Lincoln.....	"	"	"	"	"	"
"	"	"	" Joseph V. Connerat.	"	"	"	"	"	"
"	"	"	" Noah B. Knapp.....	"	"	"	"	"	"
"	"	"	" John Screven.....	"	"	"	"	"	"
"	"	"	" Geo. H. Johnston, adm.....	"	"	"	"	"	"
"	"	"	" R. J. Davant, jr....	"	"	"	"	"	"
"	"	"	" W'm McIntire.....	"	"	"	"	"	"
"	"	"	" John J. Kelly.....	"	"	"	"	"	"
"	"	"	" Octavus Cohen.....	"	"	"	"	"	"
"	"	"	" John M. Geurard...	"	"	"	"	"	"
"	"	"	" Ephraim Scudder...	"	"	"	"	"	"
"	"	"	" Lucy D. Fawcett, adm	"	"	"	"	"	"

214 6TH.

Frisbee & Roberts vs. Edward Lovell.....	Oct.	17,	1868.	Pending.
W. N. Marsh vs. " "	"	"	"	"
Zerega & Scott vs. " "	"	"	"	"
Edwin Parsons vs. Ann M. Hardee, adm....	Sept.	20,	1869.	"

Geo. W. Hatch, W. N. Marsh, Frisbee & Roberts, Zerega & Scott,	vs. Robert Stafford....	April 28, 1869.	"	

7TH.

L. H. B. Scott	vs.	W. H. Burroughs.....	Oct. 12th,	1869.		Pending.
"	"	√ Geo. Cornwell.....	"	"	"	"
"	"	√ Hiram Roberts.....	"	"	"	"
"	"	√ H. D. Weed	"	"	"	"
"	"	√ W. H. Wiltburger.....	"	"	"	"
"	"	√ John Cooper.....	"	"	"	"
"	"	√ W. W. Lincoln.....	"	"	"	"
"	"	√ Geo. S. Nichols.....	"	"	"	"
"	"	√ W'm Rogers.....	"	"	"	"
"	"	√ A. M. Ross, adm'r	Oct. 14,	1869.		"
"	"	√ Rose & McConaghy.....	Oct. 15,	1869.		"
"	"	√ Geo. H. Johnston, adm'r.	" 14,	"		"
"	"	√ Noah B. Knapp.....	" 14,	"		"
"	"	√ Anthony Porter.....	" "	"		"
"	"	√ John Screven.....	" 12,	"		"
"	"	√ W. M. Charters.....	" 12,	"		"
"	"	√ W'm McIntire..... ...	" "	"		"
"	"	√ John J. Kelly	" "	"		"
"	"	√ Alfred Haywood.....	" "	"		"
"	"	√ Robert D. Walker.....	" "	"		"
"	"	√ Octavus Cohen.....	" "	"		"
"	"	√ Joseph V. Connerat.....	" "	"		"

215 8TH.

Geo. W. Hatch	vs.	Murchison & Purse, ex...	Dec. 15,	1869.	Pending.
		W'm M. Charters.....	Dec. 17,	1869.	"
		W. M. Charters..... ...	" "	"	"
		Alfred Haywood.....	" 18th,	"	"
		Alfred Haywood.....	" "	"	"
		W'm H. Wiltberger.....	" "	"	"
		W. H. Wiltberger.....	" "	"	"
		H. D. Weed, adm'r.....	" 20th,	"	"
		H. D. Weed, adm'r.....	" "	"	"
		Robert Stafford.....	" "	"	"
W. N. Marsh	vs.	H. D. Weed, adm'r.....	" "	"	"
		√ W. H. Charters.....	" 17th,	"	"
		√ Alfred Haywood.....	" 18th,	"	"
		√ W. H. Wiltberger	" 18,	"	"

Zerega & Scott and Frisbee & Roberts filed suits, similar in dates, &c., against the four parties last named.

9TH.

L. H. B. Scott	vs.	Heyward & Heyward....	Dec. 31,	1869.	Pending.
"		√ Robert Stafford.....	" 23,	"	"
"		√ W'm B. Adams.....	" 23,	"	"
"		√ Mary Telfair	March 23,	"	"

"	√ John W. Nevitt.....	Dec.	20th,	"	"
"	√ H. D. Weed, adm'r.....	"	20,	"	"
"	√ Rob't & W. H. Habersham	"	15,	"	"
"	√ John C. Rowland.....	"	15,	"	"
"	√ Murchison & Purse, ex..	"	15,	"	"
"	√ Du Bignon & Bailey, adm'rs	Nov.	8,	1869.	"
"	√ John Richardson.....	"	"	"	"
	Scott, Zerega & Co. vs. T. R. Mills, jr., adm'r.	Dec.	30th,	1870.	"
216	Geo. W. Hatch vs. T. R. Mills, jr., adm'r.	Dec.	30,	1870.	Pending.
	Geo. W. Hatch vs. Same.....	"	"	"	"
	Levi H. B. Scott vs. Same.....	"	"	"	"
	W. N. Marsh vs. Same.....	"	"	"	"
	Frisbee & Robert vs. Same.....	"	"	"	"
	Levi H. B. Scott vs. Alexander Smith.....	Oct.	9th,	1871.	"

(Endorsement to report of special master:) U. S. circuit court, so. dist. of Georgia, in equity. Harvey Terry, complainant, vs. The Merchants & Planters' Bank et al., defendants. Report of special master. A. Sloan, master. Filed Nov'r 18, 1873. Ja's McPherson, clerk.

217 *Objections of Joseph Wright to filing of certain claims.*

April term, 1872.

Before me, Andrew Sloan, esq., master in chancery in the above cause, Joseph S. Wright, one of the persons made parties plaintiff in the above-stated cause, appears and objects to the filing of the claims of the following-named persons, and to any allowance thereon out of the funds in the hands of the receiver in this cause:

W. N. Marsh,	Frisby & Roberts,
Scott, Zerega & Co.,	Geo. W. Hatch,
L. H. B. Scott,	John Young,
Miles G. Dobbons,	Hugh McCrea,
Geo. W. Scott,	Frederick R. Scott,
W. R. Phillips & Co.,	or Phillips, Giles & Co.,

And all other parties hereto who have brought suits in another court or in any other cause on the bank-notes filed in proof of his or their claim herein, for the following reasons:

218 1st. Because the bank-notes or bills of aforesaid claimants are the vouchers and foundations of suits at common law, and judgments had thereon in another court of a different jurisdiction and practice, and that large sums of money have been allowed on such bank-notes as damages thereon, and such damages has been included in and with, and made a part of, such judgments for the benefit and profit of said bank-notes and the owners thereof.

2nd. Because the claimants aforesaid are pursuing another fund separate and distinct from the fund in court in this cause, and that large sums of money have been paid and compromises had on the judgments and claims of said claimants, and that credits thereon is or ought to be made in accordance therewith.

3rd. Because the payments made on such judgments do not represent the pro rata per cent. paid on the bank-notes of said claimants in this cause, because when the owner may have received sufficient monies on said judgments to pay said bank-notes in full with interest thereon, yet

the judgment on which these same bank-notes is founded remains only partially discharged, and the balance accrues for the benefit of the claimants aforesaid, whose notes are therefore not in like condition with the bank-notes filed by the complainant in this cause in the original suit by Harvey Terry.

4th. Because the bank-notes of the parties aforesaid offered in claim in this cause have already been partially paid, and that no other
219 or further payment should be made thereon from the fund in this cause until all other bank-notes filed in this cause shall have received a like amount pro rata payment thereon.

Philadelphia, May 20, 1872.

JOSEPH S. WRIGHT.

(Endorsement:) Harvey Terry, comp't, and the Merchants & Planters' Bank, def't. Objections of Joseph S. Wright to the filing of. Filed May 27th, 1873. Andrew Sloan, master pro hac vice.

Exceptions to report of master.

The undersigned, solicitor for W. R. Phillips & Co. and Phillips, Giles & Co., excepts to the report of Andrew Sloan, esq., master in said case, on the ground that it does not allow their respective claims for $20,882.65 and $44,097.34 pro rata out of the funds in the receiver's hands.

AMOS T. AKERMAN,
Solicitor for W. R. Phillips & Co. and Phillips, Giles & Co.

(Endorsement:) Harvey Terry vs. Merchants & Planters' Bank and others. Exceptions to report of master. Filed Dec. 16, 1873. *Filed Dec.* 16, 1873. Jas. McPherson, clerk. Akerman.

220 *Exceptions of A. W. Stone to claim of Phillips.*

George W. Hatch, Wm. N. Marsh, Levi H. B. Scott, Frisbee & Roberts, Scott, Zerega & Co., John Young et al., who are judgment creditors of said bank and party complainants of said bill, object to the claim of William R. Phillips, W. R. Phillips & Co., and Phillips, Giles & Co., filed in this case.

1. Because the cause of action, if any, arose prior to the first day of June, A. D. 1865, and no suit at law or in equity was had or commenced therein on or before the first day of January, 1870, as required by a statute of the State of Georgia in such case made and provided.

2d. Because the said claimants were and still are indebted to the said bank in a sum larger or at least equal to their claims against said bank.

3d. Because the said claim, except the bills of said bank, was secured (?) in what was known as confederate treasury-notes, in confederate money, of very little or no value at the time secured. (?)

4. Because said claims have been fully paid off and discharged long before the assignment made by said bank.

All of which these complainants will maintain and prove as this court shall direct.

A. W. STONE,
Solicitor for Levi H. B. Scott et al.

(Endorsement:) U. S. circuit court, southern district of Georgia. Harvey Terry, compl't, and the Merchants & Planters' Bank et al., def't. Exceptions of A. W. Stone to the claim of Phillips. Filed 23 May, 1873. Andrew Sloan, master, &c.

221 *Exceptions to master's report by H. Terry.*

Exception taken by the said Harvey Terry, complainant in the bill named to the report of Andrew Sloan, special master, to whom the said cause stands referred, made in pursuance of the orders of this court of April 3d, 1872, May 3d, 1872, and May 10th, 1873.

1st EXCEPTION. For that said master, by his said report, certified that he disallowed the claim of twenty-five dollars by said Harvey Terry for cash paid Edward J. Harden for counting, under order of this court in this cause, the bank-bills filed by said Terry, whereas said master should have allowed said claim as costs in the cause, and to be paid in accordance with the rule announced by said master in another connection, "that the entire court costs in the cause should be paid first before any distribution among creditors."

2nd EXCEPTION. For that said master, by his said report, certified that upon the twenty-three claims (folio 76 to 80 of report) represented by A. W. Stone and A. T. Akerman, (formerly William Dougherty,) (folio 96 and 97, 98 and 99,) and aggregating $832,115.76, there had been collected and received by said claimants from stockholders of the Merchants and Planters' Bank, on account of unpaid-up stock held by them, the aggregate sum of $197,672, and said claimants were nevertheless to share pro rata in the assets of the bank, now in court, with other claimants, who have collected and received nothing, after deducting from their aggregate claims said sum of $197,672; whereas said master should have certified that said claimants should not receive anything in this cause: 1, because this cause was instituted by said Harvey Terry to secure to himself and others in like condition the benefits
222 of the assignment of the Merchants and Planters' Bank of July 18, 1866, and said claimants, represented by Messrs. Stone & Akerman, have not accepted said assignment, but rejected the same by proceeding at law subsequent to said assignment against said bank, and its stockholders seizing upon and appropriating to themselves the assets of said bank; and (2) because said claimants are now, as appears by said master's report, (folios 117 to 121,) prosecuting suits at law in this court against the said bank and its stockholders to further secure to themselves, in opposition to the purpose of this cause and said assignment of July 18th, 1866, the assets of said bank. (3) But if said claimants are entitled to receive anything in this cause it can only be after the creditors who have accepted said assignment have received the same proportional amount on their claims as that received by them.

3nd EXCEPTION. For that said master, by his said report, certified that said creditors represented by Messrs. Stone & Akerman (late by Dougherty) are entitled to receive in addition to the amount of bills of said bank held by them respectively, interest and statutory penalties adjudged thereon, (folios ;) whereas said master should have certified in respect to said interest and penalties claimed said claimants were not entitled to receive anything.

4th EXCEPTION. For that said master, by his said report, certified that W'm & R. McIntire, holders of unpaid stock, had paid Doherty and Stone six thousand dollars; whereas said master should have certified that said W'm & R. McIntire had paid to said Doherty & Stone eight thousand dollars in cash and eleven thousand eight hun-
223 dred and seventy-nine dollars in the bills of said Merchants and Planters' Bank.

5th EXCEPTION.—For that said master, in his said report, certified

that Doherty & Stone received from W'm M. Rogers two thousand five-hundred dollars on account of unpaid-up stock held by him in the said Merchants and Planters' Bank, whereas said master should have certified that said Doherty & Stone collected and received of said Rogers on said account, two thousand five hundred dollars in cash, and seven thousand in the bills of said bank.

6th EXCEPTION.—For thats aid master, in his said report, certified that Doherty & Stone received from J. V. Connerat one thousand dollars on account of unpaid-up stock, held by him in said Merchants and Planters' Bank, whereas said master should have certified that said Doherty & Stone collected and received from said Connerat, on said account, one thousand dollars in cash, and five thousand dollars in the bills of said bank.

7th EXCEPTION.—For that said master, in his said report, certified that Stone & Doherty collected and received from the estate of Edmond Molyneux, on account of unpaid-up stock, held by the administrator of said estate in said Merchants and Planters' Bank, the sum of seventy-five thousand dollars, whereas said master should have certified that said Doherty & Stone collected and received from said estate, (George W. Johnston, adm'r) on said account, the sum of seventy-five thousand dollars in cash, and forty-one thousand and seventy-three dollars in the bills of said bank.

D. T. CORBIN,
Solicitor for Harvey Terry.

224 (Foregoing exceptions endorsed:) U. S. circuit court, so. dist. of Georgia. In equity: Harvey Terry, comp't, vs. The Merchants and Planters' Bank et al., d'f'ts. Exceptions to master's report, by Harvey Terry. Filed Dec'r 9th, 1873. Ja's McPherson, clerk. D. T. Corbin, sol. for Terry.

Exceptions L. H. B. Scott et al. to master's report.

The undersigned, solicitors for divers creditors of said bank, except to the report of Andrew Sloan, master in chancery in said cause, filed November 18, 1873, on the following grounds, to wit:

1. That it allows a pro rata share of the assets of said bank to the claims of the following-named billholders, said claims being barred by the act of limitations of the State of Georgia, of March 16th, 1869:

D. C. Bancroft.
E. and M. Brown.
Wolfe Barnette.
W. H. Baker, for estate of Morrell.
Elias Cohen, for Adolph Abrams.
Jos J. Cohen & Sons.
J. G. Cohen.
Valentine Klein.
George P. Currie.
John C. Drake.
225 Baker & Cohen.
Francis Enright.
W. Camp.
George W. Gannany.
John M. Gueard.
W'm Neyle Habersham.
A. Backer.
Branch Sons and Co.
Edward Byrnes.
Octavus Cohen.
Susan Ann Cuyler.
John Cooper.
Mary Cusic.
Jim Cope.
William Cullom.
Chs. L. DeLamotta.
Martin Dugan.
L. M. Falligant, trustee.
Louis Fried.
J. T. & H. T. Green.
Johanna Gearon.
Alfred Haywood.

William Hussey.
W. P. L. Horn.
C. C. Hardwick.
John P. Hennick.
Amos Hall.
John King.
Joseph Lippman.
Mrs. J. S. Marshall.
McNish & Baynard.
Margaret Maddox.
McIntire & Young.
John Neal.
B. F. Oliver.
Edward O'Byrne.
T. J. Buckart.
John Stoddard, trustee.
Robert Stafford.
Tho's Sweeney.
B. S. Wilson.
Geo. Welbrook.
James White.
Wyly Woodbridge.
Wilcox, Gibbs & Co.
Tison & Bro.
Gilbert A. Wilkins.
T. J. Champion.
Milo Hatch.
H. D. Headman.
John Hanlon.
Elizabeth Hobkirk.
Ketchum & Hartridge.
L. Kohn.
O. A. LaRoche.
John McHugh.
Abram Minis.
Rob't P. Myers.
March, Price & Co.
George T. Nichols.
Ja's C. Byrnes.
J. C. Rowland.
W'm Rose.
F. R. Scott.
J. J. Scarboro.
J. W. Skipper.
D. K. Wright.
John M. B. Lovell, ex. of Wiltburger.
R. B. Walker.
James M. Willis.
Bryan & Hunter.
W. P. Goodall.
T. J. McNish.

226 Harvey Terry, as to the allowance of pro rata on $13,777, bills not in suit or judgment.

AMOS T. AKERMAN,
A. W. STONE,
Solicitors for Levi H. B. Scott, W'm N. Mash, Geo. W. Hatch, et al.

(Endorsement:) Harvey Terry et al., complainant, and Merchants & Planters' B'k, et al. def'ts. Exceptions to report of master. Filed Dec. 16, 1873. Ja's McPherson, clerk. Stone. Akerman.

227 UNITED STATES OF AMERICA,
Southern district of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America, for the southern district of Georgia, held at the United States court-rooms, in the city of Savannah, in and for the said district, on Monday, the twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable John Erskine, U. S. judge for the districts of Georgia, presiding.

HARVEY TERRY ET AL., COMPL'TS,
vs.
MERCHANTS & PLANTERS' BANK, AND others, def'ts. } In equity.

Order directing marshalling of assets of bank, &c.

On motion of counsel of William N. Marsh, George W. Hatch, and other complainants in said bill, it is ordered that N. N. Wilson, receiver in said case, collect the assets of said bank as fast as possible, and

have the proceeds and all other cash funds in his hands as receiver, in court and ready for distribution on the first day of next term, with a full report of his actings and doings in the premises, and of the condition of the assets. Be it so.

JOHN ERSKINE,
U. Judge.

Dec. 22, 1873.
A. W. STONE,
AMOS T. AKERMAN,
Sol'rs for Certain Complainants.

Service.

I have this day served a copy of the within order upon the within-named A. N. Wilson personally, at Savannah, Ga., January 31, 1874. The return of

W. H. SMITH, *U. S. Marshal,*
By A. B. SMITH, *Dep'ty.*

228 (Foregoing order endorsed:) U. S. cir. court. So. dist. of Georgia. In equity. Harvey Terry vs. Merchants & Planters' Bank, &c. Order directing receiver to marshal assets of bank, preparatory to distribution, and report first day of next term. Filed Dec. 22, 1873. Ja's McPherson, clerk. Stone. Akerman.

Rulings of court upon exceptions to master's report.

Exceptions of Harvey Terry:

Exceptions one and two overruled.

Third exception sustained so far as respects the allowance of penalties to creditors represented by Stone and Akerman.

Fourth exception sustained. The amount paid by W. and R. McIntire in cash appears to be $8,000. The sum paid in notes of the bank should be credited on the claims at the market-value of the notes.

Fifth, sixth, and seventh exceptions sustained. The master should have deducted for the claim, the value of the bills of the bank received.

Exceptions filed by Geo. W. Hatch, W. N. Marsh, and Levi H. B. Scott, four in number, are all overruled.

Exception filed Dec. 16, 1873, by Stone & Akerman, against the allowance of 87 claims by the master, overruled.

Exceptions filed by A. W. Stone, in behalf of Geo. W. Hatch and others, against the allowance of the claim of W. R. Phillips & Co., overruled.

229 Exception filed by A. T. Akerman because the report does not allow the claim of W. R. Phillips & Co., for $20,822.65 and of Phillips, Giles & Co. for $44,097.34, overruled.

(Endorsement:) U. S. cir. court, so. dist. of Georgia. Equity. Harvey Terry, compl't, vs. The Merchants and Planters' Bank et al. Rulings of the court upon the exceptions to the report of Andrew Sloan, master. Filed May 13th, 1874. Ja's McPherson, clerk; Woods, judge.

Report of A. N. Wilson, receiver.

To the honorable the judges of the U. S. circuit court of the fifth circuit:

I herewith report my acts and doings, agreeably to your order of December 22nd, 1873.

230 *A. N. Wilson, receiver, in an acct. with Merchant & Planters' Bank,* 1870.

1870.					
Jan.	18.	Rece'd Ga. 6 per cent. bonds		20,000	00
"	"	" " 7 " " "		3,500	
"	"	Florida, Atlantic & Gulf Central, 2 bonds, 1,000 each		2,000	
"	"	" gold coin		41,810	45
Feb'y	10.	" interest on coupons		707	50
April	28.	" for lots 81 & 82 in Rome, Ga		1,000	
May	30.	" for $40,000.00 large gold		45,850	
"	"	" " 1,811.65 mixed "		2,063	
Aug.	2.	" interest coupons		707	50
1871.					
March	18.	" proceeds two iron safes at Cuthbert		54	87
"	"	" " lot No. 12, New Franklin ward		2,091	74
May	6.	" " 1 iron safe		22	10
1873.					
June	1.	Rece'd from Law, Lovell, & Falligant, collections from from G. B. Lamar		2,500	00
Nov.	29.	" from two Georgia bonds sold at par		2,000	00
1874.					
April	1.	" interest on bonds		5,059	15
"	"	" " " money loaned		11,908	75
				73,964	61
				73,964	61

1874.				
April	1.	To balance		60,601 78
		Georgia bonds, 6 per cent	$18,000 00	
		" " 7 " "	3,500 00	
		Florida A. & G. bonds	2,000 00	
		Judgment vs. G. B. Lamar, gold	4,400 00	
		" " executors W'm Wright	$19,124 00	
		Other minor judgments from which we hope to realize about	$6,000 00	

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1870.				
Jan.	19.	Paid for drayage on books, &c		90
"	"	" " stationery		9 75
"	26.	" " expressing coupons to Atlanta		50
March	4.	" " taxes, State & county		571 15
April	28.	" Wright & Featherson, att'ys, for compromising tax, titles, & selling		100
"	"	" J. L. Sumpkin, auctioneer		3 00
"	"	" exchange on draft		3 36
May	28.	" telegram relative to sales of gold		3 40
"	30.	" for expressing gold to New York		177
"	"	" commissions for selling		104 53
"	"	" Government-tax		4 79
"	31.	" to redeem lot No. 12, New Franklin ward, from tax for forfeiture		2,393 46
"	"	" A. N. Wilson's commissions for receiving and paying out		2,085 07
June	8.	" Atlanta New Era, for advertising		8 00
"	16.	" advertising lot No. 12, New Franklin ward		4 20
Aug.	2.	" for collecting interest express		2 50
Nov.	10.	" taxes, State & county		446 15
Dec.	29.	" R. A. Mumford, for verifying $182,872 bank-bills		40 00
1871.				
April	21.	" W. G. Mann & C. N. West, commissioners		50 00
"	"	" Sheriff Barthelmess, advertising Lamar property & costs		138 00
Nov.	11.	" taxes, State & county		428 51
"	"	" A. N. Wilson, for receiving & paying out		175 15
1872.				
Feb'y	7.	Paid N. Y. Tribune for advertising		74 10
"	"	" J. Clarke Swayze "		19 60
May	2.	" W. G. Mann & C. N. West, commissions		40 00

Nov.	30.	"	Andrew Sloan, master, &c	500 00	
"	"	"	taxes, State & county	525 49	

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1873.					
June	1.	Paid	A. N. Wilson commissions for receiving and paying out	93 77	
Nov.	29.	"	taxes, State & county	498 78	
"	"	"	advertising bills	32 50	
"	"	"	Gartrell & Jackson, att'ys' fee	1,500 00	
"	"	"	Andrew Sloan, master, &c	1,000 00	
1874.					
Jan.	14.	"	sheriff's costs in suit against W'm Wright	15 50	
"	"	"	A. N. Wilson, commissions	129 35	
April	1.	"	A. N. Wilson, commissions for receiving	2,174 22	
			By balance	60,601 78	
					73,964 61

1872.
Dec. 29. I received from Hiram Roberts, esq., $182,872.00 of the bank's bills, and cancelled them.
1873.
March 20. I received, to satisfy judgment against T. J. Walsh, $3,853.00 in the bank's bills, which were paid into court.

A. N. WILSON, *Receiver.*

(Endorsement:) U. S. circuit court so. dist. of Georgia. Harvey Terry vs. The Merchants & Planters' Bank et al. Report of A. N. Wilson, receiver. Filed April 23d, 1874. Ja's McPherson, clerk.

233 *Final report of receiver.*

A. N. Wilson, the receiver in said case, reports that, in addition to the moneys heretofore reported, he has this day received from Messrs. Lovell & Falligant, survivors of Law, Lovell & Falligant, proceeds of collections made by them, the sum of $3,953.88. He has paid said sum into court.

He further states that no assets of said bank have come to his hands as receiver, not accounted for in this and his previous returns, except an iron safe in Macon, which is damaged and worthless, and certain claims in the hands of Lovell & Falligant, as attorneys for collection.

A. N. WILSON.

SOUTHERN DISTRICT OF GEORGIA:

Personally appeared before me, A. N. Wilson, who, being sworn, says that the foregoing return is true.

A. N. WILSON.

Sworn to and subscribed before me this 18th day of May, 1874.

JA'S MCPHERSON, *Clerk.*

234 *Order directing receiver to sell bonds forthwith.*

The receiver in said case, A. N. Wilson, having into court eleven thousand five hundred dollars in six per cent. bonds of the State of Georgia, and three thousand five hundred dollars in seven per cent. bonds of said State, and two thousand dollars in bonds of the Florida, Atlantic and Gulf Central Railroad Company, it is ordered that said receiver do sell said bonds instanter at private sale, and make return of his action in the premises. Be it so.

May 18, 1874.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) U. S. cir. court, so. dist. Georgia. In equity. Harvey Terry et al. vs. Merchants & Planters' Bank et al. Order directing the receiver to sell the bonds of the fund forthwith and report. Filed May 18, 1874. Ja's McPherson, clerk. Akerman.

Report of receiver of sale of bonds.

A. N. Wilson, the receiver in said case, reports that, in pursuance of an order of the court made this day, he has sold at private sale $11,500 of six per cent. bonds of the State of Georgia for the sum of eight thousand seven hundred and forty dollars, ($8,740.00,) the rate
235 being seventy-six cents on the dollar; and three thousand five hundred dollars of seven per cent. bonds of said State for two thousand nine hundred and seventy-five dollars, ($2,975.00,) the rate being eighty-five cents on the dollar; which two sums, amounting to $11,715.00, he has paid to the clerk. Said sales were made to Byran & Hunter, brokers of Savannah, at the market-price of such bonds.

The receiver has been unable to find a purchaser for the bonds of the Florida, Atlantic Gulf Central Railroad Company.

A. N. WILSON,
Receiver.

SOUTHERN DISTRICT OF GEORGIA:

Personally appeared A. N. Wilson, who, being sworn, says the foregoing return is true.

A. N. WILSON.

Sworn to and subscribed before me this 18th day of May, 1874.
JA'S MCPHERSON, *Clerk.*

(Endorsement:) U. S. circuit court so. dist. of Ga. In equity. Harvey Terry et al. vs. The Merchants & Planters' Bank et al. Report of receiver of sale of bonds. Filed May 18, 1874. Ja's McPherson, clerk. Akerman.

236 *Petition of receiver to be discharged.*

A. N. Wilson, the receiver in said case, having this day filed his supplemental report, embracing all matters that have come to his hands or have been embraced in his charge as such receiver not included in his former reports, prays to be discharged from his said receivership. He finds himself unable to do justice to his office as receiver and to his other business, and as his sureties live at a distance, and one of them is advanced in life and desires to be relieved from all such responsibilities, he deems it just to them that he should be discharged.

A. N. WILSON.

(Endorsement:) U. S. circuit court so. dist. of Georgia, in equity. Harvey Terry et al. vs. Merchants & Planters' Bank et al. Petition to be discharged from the trust. Filed May 18, 1874. Jas. McPherson, clerk. Akerman.

Order discharging receiver from trust, &c.

A. N. Wilson, the receiver in said case, having made full and satisfactory returns of his actings and doings as such receiver, and having paid

into court the moneys and bonds that have come to his hands as such, and having this day petitioned for his discharge from the receivership and shown good reasons therefor: It is ordered that he be and
337 hereby is discharged from his office as such receiver, except so far as to continue his name as such in legal proceedings; and it is ordered that Messrs. Lovell & Falligant, his attorneys, account to this court for all future collections. This order is made saving the rights of all persons.

In open court, May 18, 1874.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) U. S. cir. court so. dist. of Georgia. In equity. Harvey Terry et al. vs. Merchants & Planters' Bank et al. Order discharging receiver from trust, and order for Lovell & Falligant to report to the court their proceedings. Filed May 18, 1874. Jas. McPherson, clerk. Akerman.

Final decree confirming master's report, etc.

The report of Andrew Sloan, special master in the above-entitled cause, as modified by the decision of this court upon certain exceptions filed to said report, stands confirmed as the judgment of this court; and it is thereupon ordered, adjudged, and decreed by the court that the fund in the registry of the court, to wit, eighty-two thousand seven hundred and seventy dollars and seventy-six cents ($82,770.76) be paid out as follows, to wit:

238	1. To A. N. Wilson, receiver, for commissions....	$1,734 48
	2. " H. Terry for costs allowed in report.....	20 00
3.	To James McPherson, clerk's fees.....	318 35
4.	" W. H. Smyth, marshal's costs.....	41 62
5.	" James McPherson, clerk, commission on fund....	827 70
	To claimants in said cause, billholders, as follows, to wit:	
6.	To D. C. Bancroft.....	42 28
7.	" Backer & Cohen.....	8 70
8.	" E. M. Brown.....	91 61
9.	" A. Backer.....	252 99
10.	" Wolf Barnett.....	89 78
11.	" Branch, Sons & Co.....	1,057 83
12.	" W. H. Baker, for estate of Morrell.....	430 12
13.	" Edward Burns.....	4 61
14.	" Octavus Cohen.....	174 00
15.	" Elias Cohen, for Adolph Abrams.....	254 04
16.	" Susan Ann Cuyler.....	26 10
17.	" John Cooper.....	548 01
18.	" J. J. Cohen & Sons.....	8 61
19.	" Mary Cusick.....	26 10
20.	" J. G. Cohen.....	114 49
21.	" Jim Cope.....	30 45
22.	" Valentine Klein.....	10 09
23.	" William Cullom.....	3 91
24.	" George P. Curry.....	275 96
25.	" Charles DeLamotta.....	2 26

26.	" John C. Drake	8 70
27.	" Martin Duggan	36 97
28.	" Francis Euright	5 56
29.	" L. N. Falligant, trustee	104 57
	30. To W. Camp	6 26
239	31. " Louis Fried	27 49
	32. " George W. Garmany	269 96
33.	To J. T. & H. T. Green	693 91
34.	" John M. Guerard	34 80
35.	" Johana Gearon	44 19
36.	" W. Neyle Habersham	696 69
37.	" Alfred Haywood	70 12
38.	" William Hussey	5 04
39.	" Milo Hatch	52 46
40.	" W. P. L. Ham	2 17
41.	" H. D. Headman	11 31
42.	" C. C. Hardwick	770 82
43.	" John Hanlon	19 05
44.	" John P. Hennick	16 87
45.	" Elizabeth Hobkirk	4 69
46.	" Mrs. Ann Hall	5 48
47.	" Ketchum & Hartridge	353 39
48.	" John King	20 53
49.	" L. Kohn	18 27
50.	" Joseph Lippman	44 71
51.	" Mrs. O. A. LaRoach	10 17
52.	" Edward Lovell	338 43
53.	" R. L. Mott	168 34
54.	" Mrs. J. E. Marshal	15 83
55.	" John McHugh	10 17
56.	" McNish & Baynard	13 65
57.	" Abram Minnis	8 78
58.	" Margaret Maddox	8 70
59.	" Robert P. Myers	6 96
60.	" A. T. McIntire	164 95
	61. To McIntire & Young	47 85
240	62. " March, Price & Co	173 73
	63. " John Neal	8 00
64.	To George T. Nichols	4 35
65.	" George S. Nichols	174 00
66.	" B. F. Oliver	1 74
67.	" James O'Byrne	4 17
68.	" Edward O'Byrne	82 30
69.	" J. C. Rowland	193 14
70.	" F. J. Ruckert	5 65
71.	" W'm Rose	13 83
72.	" John Stoddard, trustee	522 52
73.	" F. R. Scott	255 51
74.	" Robert Stafford	2,610 00
75.	" J. J. Scarborough	369 14
76.	" Thomas Sweeney	40 89
77.	" J. W. Skipper	16 70
78.	" Joseph S. Wright	228 37
79.	" Weeds & Cornwell	23 83
80.	" B. S. Wilson	6 78
81.	" D. K. Wright	53 85

82.	" George Wellbrook	17 05
83.	" J. M. B. Lovell, executors et al. Wiltberger	139 20
84.	" James White	12 26
85.	" Wiley Woodbridge	22 18
86.	" R. D. Walker	113 10
87.	" Wilcox, Gibbs & Co	1 65
88.	" James M. Willis	155 73
89.	" Wilson & Brother	6 87
90.	" Bryan & Hunter	2,305 50
91.	" Gilbert A. Wilkins	819 97
	92. To John W. Nevitt	261 00
241	93. To W. P. Goodall	33 06
	94. " W. P. Goodall	27 31
95.	To F. J. Champion	2,786 26
96.	" T. J. McNish	120 06
97.	" George B. Cumming	2,629 31
98.	" Harvey Terry	4,924 24
99.	" W. R. Phillips & Co	3,697 23
100.	To the clients of Stone & Doherty, (now Akerman,) named in the master's report, being eight and seven-tenths per cent. on five hundred and sixty-three thousand six hundred and eighty-six dollars and forty-eight cents, ($563,686.48.)	$49,040 72

Which said several sums the clerk of this court is hereby directed to pay to the respective parties hereinabove declared to be entitled thereto, or their representatives or attorneys, taking their respective receipts for the sums so paid.

The residue of said fund, to wit, three hundred and sixty-four dollars and sixty-three cents, will remain in court for its future disposition in accordance with the principles of this decree.

In this decree it is considered that the billholders represented by Messrs. Stone & Doherty, (now Akerman,) have received in payment, from various stockholders, the bills of said bank, amounting to sixty-four thousand nine hundred and fifty-two dollars, which are estimated at the value of ten cents on the dollar; and also that they have received
242 in payment from various stockholders, in addition to the amounts reported by Andrew Sloan, special master, the sum of forty-three thousand six hundred and fifty-eight dollars in cash; which amounts have been deducted, together with two thousand dollars in cash omitted by the master in his report, from the amount of their several claims. The percentage hereby awarded to the several billholders is eight and seven-tenths on the dollar. Be it so.

In open court, May 18, 1874.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) U. S. cir. court, so. dist. of Georgia. In equity. Harvey Terry et al., vs. The Merchants & Planters' Bank et al. Final decree confirming master's report and ordering distribution of funds in the court. Filed May 18, 1874. Ja's McPherson, clerk. Akerman, Corbin.

Petition for appeal and severance.

To the honorable the judges of the circuit court of the United States for the district aforesaid:

The petition of Harvey Terry, complainant in the above-entitled cause, shows:

That your petitioner in his individual capacity, (no other parties in said cause joining with him therein,) filed in said cause, on the 9th
243 day of December, A. D. 1873, certain exceptions to the report of Andrew Sloan, special master, to whom said cause stood referred, and among others the following, to wit:

EXCEPTION II. For that said master, by his said report, certified that upon the twenty-three claims (folios 76 to 80 of report) represented by A. W. Stone and A. T. Akerman, (formerly W'm Dougherty,) (folios 96, 97, 98, & 99,) and aggregating ($832,115.76) eight hundred and thirty-two thousand one hundred and fifteen dollars and seventy-six cents, there had been collected and received by said claimants from stockholders of the Merchants and Planters' Bank, an account of unpaid-up stock held by them, the aggregate sum of ($197,672.00) one hundred and ninety-seven thousand six hundred and seventy-two dollars, and said claimants were, nevertheless, entitled to share pro rata in the assets of the bank now in court with other claimants who have collected and received nothing, after deducting their aggregate claims, said sum of one hundred and ninety-seven thousand six hundred and seventy-two dollars, ($197,672.00,) whereas said master should have certified that said claimants should not receive anything in this cause: (1) because this cause was instituted by said Harvey Terry to secure to himself and others in like condition the benefits of the assignment of the Merchants & Planters' Bank of July 18, 1866; and said claimants, represented by Messrs.
244 Stone & Akerman, have not accepted said assignment, but rejected the same by proceeding at law, subsequent to said assignment, against said bank and its stockholders, seizing upon and appropriating to themselves the assets of said bank; and (2) because said claimants are now, as appears by said master's report, (folio 117,) prosecuting suits at law in this court against the said bank and its stockholders, to further secure to themselves, in opposition to the purposes of this cause and said assignment of July 18, 1866, the assets of said bank. But if said claimants are entitled to receive anything in this cause it can only be after the creditors who have accepted said assignment have received the same proportional amount on their claims as that received by them.

EXCEPTION III. For that said master by his report certified that said creditors represented by Messrs. Stone & Akerman (lately Doherty) are entitled to recover, in addition to the amount of bills of said bank held by them respectively, interest and statutory penalties adjudged thereon, (folios ;) whereas said master should have certified, in respect to said interest and penalties claimed, said claimants were not entitled to receive anything.

And your petitioner shows that the April stated term of said court, A. D. 1874, May 13, said exception first above set forth, numbered
245 II, was overruled by said court, and said report, so far as related to by said exception, confirmed. And said exception second above set forth, numbered III, was sustained so far as respects the allowance of penalties to creditors represented by Messrs. Stone & Akerman, and in other respects said exception was overruled; and said report, so far as related to by said exception thus qualified, was, on the 18th day

of May, A. D. 1874, confirmed, and the fund in the court ordered to be distributed accordingly.

That said decree of the court of May 13th, and May 18th, 1874, is, as your petitioner is advised and humbly submits, erroneous; that said exceptions to said master's report should have been fully sustained, and the decree should be reversed.

That said decree alone affects your petitioner, and said claimants represented by Messrs. Stone & Akerman, as no other party, complainant or defendant in this cause, joined your petitioner in said exceptions, and no other parties sustained or opposed them. That your petitioner therefore prays that he may be allowed an appeal from the said decree to the Supreme Court of the United States, and this without joining other parties in this cause with him as appellants, or other than said claimants represented by Stone & Akerman as defendants. And your petitioner will ever pray, &c.

D. T. CORBIN,
Solicitor for Harvey Terry.

246 (Endorsement:) United States of America, southern dist. of Georgia, 5th circuit. In equity. Harvey Terry, complainant, vs. The Merchants & Planters' Bank, and Hiram Roberts, assignee. Petition for appeal and severance. D. T. Corbin, sol'r for peti'r. Filed May 18, 1874. Ja's McPherson, clerk.

Appeal allowed and severance.

On hearing the petition of Harvey Terry, complainant in the above-entitled cause, for an appeal to the Supreme Court of the United States without joining other parties with himself as appellants, and without joining as defendants in the appeal others than the twenty-three claimants represented by Messrs. Stone & Akerman, and on consideration of the facts appearing before me, it is adjudged that the interest of said Harvey Terry is separate and distinct from that of other parties, claimants in said cause, no one of them having joined with said Terry in making the questions involved in this appeal; and it is adjudged that he, said Harvey Terry, have leave to appeal from said decree complained of, and this, without joining any other party claimant with him as appellant.

It is further considered from the record before the court that
247 the several claimants, twenty-three in number, represented by Messrs. Stone and Akerman, and considered together in the special master's report, are the only parties interested as defendants in the said appeal; that their interests are joint, but separate and distinct from any other party in the cause. Allowed in open court.

In open court, May 18, 1874.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) U. S. C., so. dist. Ga. In equity. Harvey Terry vs. The Merchants and Planters' Bank, and Hiram Roberts, assignee. Appeal allowed and severance. D. T. Corbin, sol'r for Harvey Terry. Filed May 18, 1874. Ja's McPherson, clerk.

248 *Petition of Harvey Terry for counsel-fees, &c.: denial thereof, and appeal to Supreme Court allowed.*

To the judges of the circuit court:

The petition of Harvey Terry respectfully shows—

That he is the original complainant in the above cause, and he filed

the bill of complaint therein on behalf of himself and all other parties in like condition who should come in and share the expense of the suit, and, by his diligence and at his expense, the fund now in court was realized and brought into court. That this fund in court is, in round numbers, eighty thousand dollars, to be distributed among the claimants now in the cause. That a large number of claimants have appeared and proved their claims in this cause, to wit, one hundred and fourteen in number, aggregating about nine hundred thousand dollars.

Your petitioner represents that he was at large expense in the initiation of said suit, and has paid large sums of money to his attorneys, as retainer in said cause on commencing said suit, and been at large personal expense and trouble in connection with original preparation of said cause, aggregating about two thousand two hundred dollars; and your petitioner therefore prays that he may have his costs, attorneys' fees, and expenses of suit in said cause as aforesaid, taxed, as between attorney and client, and that the same may be paid out of the fund in
249 court before the same is distributed, and that he may be awarded therefor the sum of two thousand two hundred dollars, or such sum as to the court shall seem just and equitable.

D. T. CORBIN,
Solicitor for Harvey Terry.

As to attorney-fees, refused.

JOHN ERSKINE, *Judge.*

MAY 16, 1874.

To the judges of the circuit court:

Now comes Harvey Terry, petitioner in the above matter, and prays an appeal from the order of the court refusing to entertain said petition to the Supreme Court of the United States.

D. T. CORBIN,
Solicitor for Harvey Terry.

MAY 16, 1874.

Appeal allowed.

JOHN ERSKINE,
U. S. Dist. Judge, sitting at Circuit.

MAY 16, 1874.

(Endorsed:) United States of America, southern dist. Georgia. In equity. Harvey Terry vs. The Merchants and Planters' Bank and Hiram Roberts, assignee. Petition of Harvey Terry for allowance of counsel-fees in cause. D. T. Corbin, sol'r for pet'r. Filed May 16, 1874. Ja's McPherson, clerk. Petition denied, and appeal allowed to Supreme Court, May 18, 1874.

250 *Appeal-bond.*

Know all men by these presents that we, Harvey Terry, of the city of Columbia, South Carolina, and John T. Newberry, of the city of Augusta, Georgia, are held and firmly bound unto the Merchants & Planters' Bank in the full and just sum of two hundred and fifty dollars, to be paid to the said Merchants and Planters' Bank, or its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our

seals, and dated this twentieth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a circuit court of the United States for the southern district of Georgia, held at Savannah, in a suit depending in said court between Harvey Terry, as plaintiff, and The Merchants & Planters' Bank was defendant, a decree of judgment was rendered against the said Merchants & Planters' Bank; and the said Harvey Terry, having obtained leave of the court to appeal, and filed a copy thereof in the clerks' office of the said court, to reverse the said decree of judgment in the aforesaid suit, and a citation directed to the said Merchants &
251 Planters' Bank, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the 2nd Monday of October next:

Now, the condition of the above obligation is such, that if the said Harvey Terry shall prosecute said appeal to effect, and answer all damage and costs if he fail to make his plea good, then the above obligation to be void; else to remain of full force and virtue.

HARVEY TERRY. [L. S.]
JOHN L. NEWBERRY. [L. S.]

Signed, sealed, and delivered in the presence of—
WILLARD F. WARNER.
C. P. FREEMAN.

Approved by—

JOHN ERSKINE,
U. S. Judge, Georgia.

MAY 22, 1874.

(Endorsed:) Harvey Terry vs. Merchants & Planters' Bank, &c. Appeal-bond. Filed May 23, 1874. Ja's McPherson, clerk. Corbin.

252 *Clerk's certificate.*

UINTED STATES OF AMERICA,
Southern District of Georgia:

I, James McPherson, clerk of the fifth circuit court of the United States for the southern district of Georgia, do hereby certify that the foregoing pages comprise a true and perfect transcript of the record in the suit between Harvey Terry, complainant, and The Merchants and Planters' Bank and others, defendants, as appears of file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at Savannah, in said district, this thirtieth day of May, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.] JA'S MCPHERSON, *Clerk.*

(Indorsement on cover:) No. 470. Harvey Terry, appellant, vs. The Merchants and Planters' Bank. S. Georgia C. C. U. S. Filed 15th August, 1874.